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SPEECHES

JOHN P. BARKER

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1811

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SPEECHES

OF

JOHN PHILPOT CURRAN, ESQ.

WITH A BRIEF SKETCH

OF THE

HISTORY OF IRELAND;

AND

A BIOGRAPHICAL ACCOUNT OF

MR. CURRAN.

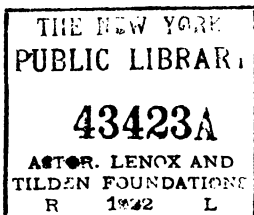
IN TWO VOLUMES—VOL. I.

NEW-YORK:

Printed and published by I. Riley.

1811.

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DISTRICT OF NEW-YORK, ss.

BE IT REMEMBERED, That on the twentieth day of November, in the thirty-sixth year of the Independence of the United States of America, **ISAAC RILEY**, of the said district, hath deposited in this office the title of a book, the right whereof he claims as proprietor, in the words following, to wit:

"Speeches of John Philpot Curran, Esq. With a Brief Sketch of the History of Ireland, and a Biographical Account of Mr. Curran. In two volumes. VOL. I."

IN CONFORMITY to the act of the Congress of the United States, entitled, "An act for the encouragement of learning, by securing the copies of maps, charts and books, to the authors and proprietors of such copies, during the times therein mentioned;" and also to an act, entitled, "An act, supplementary to an act, entitled, an act for the encouragement of learning, by securing the copies of maps, charts and books, to the authors and proprietors of such copies, during the times therein mentioned, and extending the benefits thereof to the arts of designing, engraving and etching historical and other prints."

CHARLES CLINTON,
Clerk of the District of New-York.

ADVERTISEMENT.

IN the present volumes there are comprehended, not only the whole of the London edition of the Speeches of Mr. CURRAN, but also many additional speeches, by the same orator, including, as it is believed, the whole that have been hitherto published.

Of the claims to public attention to what has fallen from the lips of this distinguished speaker nothing, even in this country, is necessary to be said.

New-York, November, 1811.

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A

BRIEF SKETCH

OF THE

HISTORY OF IRELAND.

IRELAND is an island in the Atlantic ocean, situate between the 5th and 10th degrees of west longitude, and the 51st and 56th of north latitude—in length it is about 300 miles, with a medial breadth of 150 miles, giving an area of nearly 27,500 miles.

The name IRELAND is said to be derived from the word *Eir*, in the Celtic language signifying west; whence the names *Ierna*, *Iverna*, *Hibernia*, and *Ireland*. In poetical descriptions, it is sometimes called the *Green*, or *Emerald Isle*.

Much difference of opinion has arisen concerning the peopling of this island. The Irish writers strenuously assert, that the first inhabitants came from Spain, under a leader of the name of *Golam Milea Espaine*, i. e. Golam the Hero of Spain; hence the native Irish are called *Milesians*. But the British writers contend, that Ireland was first peopled either from Wales or Scotland. The latter idea seems the most probable, as the language of the Scotch Highlanders, and the native Irish, are radically and essentially the same.*

* This question has excited much national pride, and even animosity amongst the historical critics of the two islands.—Pinkerton, in his poor and partial account of Ireland, endeavours to throw some light on the subject. But those who are inclined to look for a portion of rational information on

In such a sketch as this, it would be improper to enter into all the fabulous accounts of the Irish bards and poets, the only historians of those dark and barbarous ages. One thing, however, is certain, that the Romans never got the length of Ireland; and that when the empire was tumbled into ruins by the Gothic hordes, Ireland enjoyed a long peace; it became the refuge of the learned and virtuous, who fled from other countries to enjoy tranquillity in that beautifully sequestered island.

We shall therefore pass over all the fabulous narrations, the contentions of the different septs or clans, and the wars of the provincial kings, and come at once to what appears to be founded in truth.

The order of priesthood had hitherto been in the hands of the bards and druids, and like other priests, they exercised an unbounded sway over the minds and actions of a rude and ignorant people, till about the middle of the fifth century, when christianity was introduced into Ireland by Patricius, a Scotchman by birth.*

For some time, the bards endeavoured to maintain their influence, but the principal king of the island, and some others of the great men, being converted to the true religion, and St. Patrick establishing his ecclesiastical residence at *Ardmacha*, (now Armagh,) christianity at length obtained the ascendancy.

The christian religion, so excellent in its principles, and so benignant in its doctrines, instead of bringing the glad tidings

a question of not much importance, will consult the elegant, the sceptical, and the deep-searching Gibbon, in what he calls "a distinct image of the Roman Empire, under Valentinian and Valens," chap. xiv. sec. 9.

* St. Patrick is said to have been born in the year 373, near to Dumbarton; he was first a soldier and then a priest; he landed at Wicklow, in 441, converted the Irish, became Bishop of Armagh, and died on the 17th of March, in the 120th year of his age.

of peace and good will to men, unhappily, in too many instances, seems rather to have been the cause of strife, hatred, wars, and persecution.—But history and experience show us, that this was the work of selfish and designing men, who perverted religion from its original intention, in order to gratify their avarice or ambition.—The establishment of christianity, therefore, it appears, did not better the condition of the Irish. The order of priests, under a new name, were as fond of power and emoluments as the order of the druids; and petty wars and clamorous broils continued to divide the people, and weaken the country as formerly—when, about the end of the eighth century, Ireland was invaded by the Danes, or Normans. Against this enemy, the Irish contended for a number of years, till 845, when Turgesius the Dane was proclaimed King of all Ireland.

But no sooner did Turgesius get all the power into his own hands, than, as usual, he abused it, and became a tyrant. The Irish rebelled against their oppressors, and massacred a great number of the Danes; but these receiving reinforcements, the war continued with alternate success, when the country was invaded by Magnus, King of Norway. Both parties uniting against this new invader, Magnus was defeated, and driven from Ireland.

After this event, several monarchs, it is said, arose in Ireland, who deserved the name of king by their good actions. These were Malachy I. and II. and Brian Boromy. This latter monarch is celebrated above all for his wisdom and bravery, and Ireland, for a time, was prosperous and happy; when, in the year 1004, at the famous battle of Clontarf, he defeated the Danes, but lost his life, in the 88th year of his age.

After Brian's death, Ireland again became the prey of party feuds, arising from the intrigues and ambition of the provincial chiefs. These destructive contentions lasted for many years, until an event took place, that forms an important æra in the history of Ireland, and for which we have

something like authentic records—This was the invasion of Ireland by the *English*. The first adventurers were two private gentlemen, named Fitz-Stephens and Fitzgerald. They crossed the sea from Wales with about 300 men, in the year 1171; and they were soon followed by Earl Strongbow, with 1,200 more.—Their pretext for coming into Ireland should first be explained.

In the destructive contentions of the Irish chiefs, O'Dermot, O'Connor, O'Nial, O'Rourke, &c. each claimed the ascendancy. Not content with defeating O'Rourke in battle, O'Dermot carried off his wife, a woman of singular beauty, for whom he had conceived a violent passion. A junction of parties having at length taken place, and chastity, even in those rude times, being considered as a virtue, O'Dermot was defeated, deposed, and forced to leave the island. He landed in England, and solicited the assistance of Henry II. to recover his dominions, which, when effected, he meanly offered to acknowledge Henry as his liege lord. The English king, glad of such an invitation, despatched the before-mentioned party to the aid of his new ally; and, in the year 1172, Henry in person, with a considerable army, landed at Waterford.

The rape of Helen, and the destruction of Troy, have conferred immortality on the Grecian bard. The siege of Troy, it is said, lasted ten years—but the infidelity of O'Rourke's wife hath caused Ireland to groan under innumerable evils for more than six hundred years.

It was not long before Henry contrived to obtain possession of a considerable portion of the eastern part of the country.—The Irish chieftains, for some time, were pleased with having a powerful prince among them; he gave them entertainments; flattered their vanity, and even gave them the title of *king*.^{*}—Henry and his immediate successors called

^{*} The *wild* Irish of the 12th century did not differ from the *civilized* men of the present day. It is a grand and prevailing system in all the Courts of Europe, from George's Knights of the Garter to Napoleon's Legion of

themselves only the *Lords of Ireland*. The despotic Henry VIII. was the first who assumed the regal title.

Well satisfied with his expedition, after establishing his power and influence over a great part of the country, Henry left Ireland after a residence of only five months. Such was the first settlement of the English in Ireland, which they sometimes called a conquest, an acquisition, or an alliance, as their power or their weakness happened to preponderate.

Henry's immediate successors did not pursue the design of conquering Ireland. Satisfied with having their power introduced into the island, and recognised in certain districts and portions of it, they made no attempt to extend it farther. The colony was left to thrive by its own resources, and the occasional accession of new settlers. The colony did not, for a long time, much extend beyond its original limits; rather the reverse. The land occupied by the English colony (or *The English Pale*, as it was then called) reached only a few miles around Dublin, in the time of Edward III. that is, 150 years after the first settling of the colony.

This narrowing of the English Pale arose from two causes: First, from the hostilities committed by the settlers against the districts by which they were surrounded, and from which arose a general alarm, and a powerful confederacy against them. Secondly, the successors to the first English settlers

Honour—Flatter a man's vanity, put a riband on his shoulder, a gilt star on his breast, and call him *Sir* or *my Lord*, and what may you not make of the great baby?

"Behold the child! —————"

"Pleased with a rattle, tickled with a straw;

"Some livelier plaything gives his youth delight,

"A little louder, but as empty quite:

"Stuck o'er with titles, and hung round with strings,

"Scarfs, garters, gold, amuse his riper years;

"And beads and prayer-books are the toys of age!"—POPE.

"Men are but children of a larger growth."—DRYDEN.

who became possessed of lands in the interior of the country, had gradually renounced their dependence on the primary settlement; and, in process of time, had adopted the laws, the dress, and even the language of the natives.

These English families, now transformed into Irish inhabitants, were moreover particularly inclined to oppose the extension of the Pale and English law. They held their lands under the *Brehon* or Irish law, which totally differed from the English law. And in order to secure themselves still farther, and more completely to disclaim any connection with the English, they even assumed Irish surnames, such as *Mac-Yorice*, *Mac-Morice*, *Mac-Gibbon*, &c.

Owing to these circumstances, a new class of inhabitants arose in Ireland, distinct from both the English and Irish. It was formed of those English families who had, from time to time, renounced subjection to the English government. The English called them *The Degenerate English*; they formed numerous tribes and clans, and were formidable enemies of the English colony.

At length, in the 36th year of Edward III. A. D. 1361, a new expedition was projected to Ireland. Lionel, Duke of Clarence, the King's second son, was the leader of the enterprise. He had married the only daughter of Bourke, the *Red Earl*, and claimed all his lands in Ireland as her dower; But an Irish clan of the name of Mac-Williams had taken possession of the lands. The Duke's expedition, therefore, was both to recover his lands, and punish the degenerate English; but as he brought with him only a small force, and received no support in the country, he was obliged to relinquish his enterprise.—But before he left Ireland, he held a parliament in Kilkenny, in the character of Lord Deputy, and got a law passed, known by the name of the *Statute of Kilkenny*.

This statute shows, that oppressive laws are an old evil in Ireland.—It recites, "That the English of the realm of Ireland were become *mere Irish* in their language, names, dress,

&c. had rejected the English laws, and submitted to those of the Irish, with whom they had united in marriage, to the ruin of the English interest. It is therefore enacted, that marrying and *gossiping* among the Irish, shall be punished as high treason; to use an Irish name, to speak the Irish language, to ride without a saddle, or entertain any Irish bard or minstrel, rhymer, or newsteller, &c. his lands shall be forfeited."

An expedition to Ireland was undertaken by Richard II. who landed in Ireland with a considerable army. As Richard was desirous of exhibiting his greatness to the Irish chiefs, so they were willing to show their consequence; they flocked to Richard's court from all quarters; no less than seventy-five independent chiefs were entertained, and four of the principal, O'Nial, O'Connor, O'Brien, and Mac-Murcad, had the honour to sit at the king's own table, clothed in robes of state; some of them were even knighted!—Yet, after all this parade, Richard was obliged to leave the country, without enlarging the Pale.

After this, no expedition was attempted against Ireland for more than a century, during which there was almost a continual warfare between the English Pale and the natives. The colony, however, still continued to exist; it defended itself by making alliances sometimes with one chief, and sometimes with another; occasionally acting with vigour, and then forgetting the statute of Kilkenny, as circumstances made it necessary.

The inhabitants of Ireland may now be classed as follows:

1. The native Irish.
2. The degenerate English.
3. The English subjects of blood, possessing property, and sometimes attending their parliament.
4. The English subjects of birth, who composed the government of the colony, and were assisted by England.

Such was the situation of affairs in Ireland at the accession of Henry VIII. A. D. 1509, and at this time the Pale contained only four counties. Henry did indeed assume the title of *King* of Ireland, and had caused certain districts

without the Pale to be divided into counties, but it was only a nominal division. The *black rent* continued to be exacted from the inhabitants of the borders of the Pale by the surrounding chiefs, who still considered themselves as independent, and, as such, entered into treaties of peace with the English king, or his lieutenant.

Such was the state of Ireland during the reigns of Henry VIII. Edward VI. Queen Mary, and part of Queen Elizabeth's reign—on one side, continual coercion; on the other, a constant repulsion.

At length religious zeal stepped in to augment national prejudice.—The measures pursued in the reign of Edward VI. in order to force the protestant religion upon the Irish, had the natural effect of attaching them more firmly to their own religious system; and a general spirit of hatred to the English government manifested itself at the commencement of Elizabeth's reign.

This disposition was favourable to Philip II. of Spain, for promoting his hostile designs against England; partial invasions of Ireland from Spain had been attempted several years before the sending out of the famous *Armada*; and Philip said he had two claims upon Ireland, one on account of the catholic religion, the other because the Milesians came originally from Spain!

Spain was then the most powerful, the most ambitious, and the most bigoted nation in Europe; and, by her geographical situation, is well situated for a convenient sea intercourse with Ireland. An army of several thousands of Spaniards were sent to that country, accompanied by a Nuncio from his Holiness the Pope, who took possession of Kinsale. Thus England found herself in danger of being hedged in by the formidable power of Spain, both on the east and the west; on one side by the Netherlands, on the other by Ireland.

These considerations determined the English to make extraordinary efforts to obtain the entire possession of Ireland.

Accordingly a large army was sent under the command of Lord Essex, the Queen's favourite, which, assisted by the advantages already possessed by the English government, by the dissension of the Irish Chiefs, and by the memorable defeat of the *invincible* Armada, effected a complete reduction of the country after a war that lasted about seven years.*

* The English having at length overcome Ireland, the then condition of that unhappy country is thus described in the following beautifully pathetic effusion of an Irish bard.

"O the miserable condition of my dear countrymen!—How languid their joys, how pressing their sorrows!—The wreck of a ruined nation; the wretched crew of a vessel long tossed about by tempestuous waves, and finally cast away!—We are become the prisoners of the *Saxon* nation, the captives of a remorseless tyranny!—Our sentence is pronounced, our destruction is inevitable!—O frightful, excruciating thought!—Liberty exchanged for servitude, beauty for deformity, independence for slavery!—A brave people become a desponding race!—How came this vile transformation!—We are not the same people!—Need I appeal to your own senses—but what sensations have ye left!—Over our whole island, every kind of illegal and extrajudicial proceeding hath assumed the strong form of law, and our only security depends upon a submission to lawless law!—Mark the change which these bold intruders have wrought on the face of our country—they have hemmed in our green lawns, the former scenes of our virtue and glory—they have disfigured with towers and ramparts, those fair fields which Nature intended for the support of her creatures—that Nature which we see defrauded, and whose laws are so wantonly counteracted, that this lately free Ireland is metamorphosed into another *Saxony*!—The slaves of Ireland no longer recognise their common mother; she disowns us for her children; we have lost our ancient forms; and we now see only insulting *Saxon* conquerors, and submissive *Irish* slaves!—Helpless land!—thou art a shattered bark, over which the tempestuous sea hath burst its way, and we can scarcely perceive a part of the wreck in the rude hands of the plunderer!—Yes, the plunderer hath refitted you for his own uses, and we are new-moulded for his own purposes!—Ye Israelites of Egypt, ye wretched inhabitants of oppressed *Erin*, is there no relief for you?—Is there no Hector left for the defence, no Hero for the recovery of Troy?—Send us, O God! a second Moses to redeem thy people from the hands of these cruel *Saxons*!" (a)

(a) The Irish and Welsh bards called the English, the *Saxon* nation. Edward I. (he who treacherously murdered Sir William Wallace) to make short work of the business, collected a number of the latter, and then had

Queen Elizabeth, however, did not live to see Ireland entirely subjected; for the final treaty with O'Nial of Tyrone, did not take place until some days after her death. James I. is therefore the first English monarch who possessed the entire dominion of Ireland.

The English government being now generally established by force of arms, there seemed a probability that the inhabitants would gradually accommodate themselves to the English laws and customs, and that peace at last would prevail in Ireland. But certain events had lately taken place, that gave rise to animosities and contests, as obstinate, and as bloody, and as disgraceful, as any that had yet happened—we allude to the *religious* dissensions caused by the forcible introduction of the Reformation amongst the Irish.

The first attempt to introduce the Reformation into Ireland, was in the reign of Edward VI. when orders were sent for using the English liturgy in all the churches, and directions were given for removing, selling, or destroying all the ornaments, &c. of the catholic religion; neither argument, nor reason, nor persuasion, were used, but the harsh commands were executed with severity and strictness by an insolent soldiery!

On Queen Mary's ascending the English throne, all these proceedings were suddenly and violently reversed: The anti-them all massacred!—See Gray's beautiful Ode, "Ruin seize thee, ruthless King," &c.

It was long before the Irish bards, or wandering minstrels, were totally extirpated by the English power; Carolan, born in 1670, may be considered as the last of the order. Sometimes yet may be seen a few itinerant harpers both in Wales and Ireland; and scarcely any thing can strike the mind with a more pleasing, soothing melancholy, and so powerfully excite ideas of ancient times, than an old gray-headed man, chanting his legendary tales, accompanied by the sweet and impressive notes of the harp.

Ireland was famous for music and poetry. The Scotch and the Irish, each of them, contend for the honour of *Ossian's* Poems; probably they were formed from both the nations, as they then had but one common language, and for several centuries, had a common intercourse and connection both in civil and religious affairs.

cient order of things was again established; the Latin litany and catholic ornaments were restored to all the churches; and the fires of Smithfield were kindled by this bigoted and impolitic woman—persecution with all its horrors was renewed in the sacred name of religion!*

At Queen Elizabeth's accession, another reformation took place—the catholics were again put down, and protestantism gained great strength during her long and prosperous reign.

King James pursued the business of reformation with eagerness, and his power being much greater, his efforts were attended with greater effect. As a further step towards establishing the protestant religion, he escheated, or forfeited, six of the northern counties, viz. Antrim, Armagh, Down, Derry, Donegal, and Tyrone, settling in them large colonies of people from Scotland, and some from England: hence Derry is called *London-Derry*, as being, most of it, the property, by royal grants, of the twelve incorporated companies of the city of London.

From this time, the people of Ireland may be viewed in

* There is a great similarity between this Queen Mary and James II. Both of them, by their violent bigotry, ruined the cause which they were anxious to promote. It may be said that the people of England became protestants, not so much from the convictions of reason, as from the fears of popish despotism.

What a horrible picture does history give of the folly and wickedness of men! It is but little known, because the English historians only skim the subject, that the Scotch suffered much persecution in the reign of Charles II. In one respect this was rather unaccountable, as that monarch was a voluptuous, unprincipled libertine; but it was a *state business*, to make episcopacy the *state religion* of Scotland. The Bishops of Rome, in the plenitude of their power, beat down every attempt to enlighten and enfranchise the human mind; they persecuted, and, at length, extirpated, the Albigenes, &c. The Spaniards, by that terrible *state engine*, the inquisition, persecuted, and banished, and tortured, in the name of the most Holy Trinity, millions of Jews, Moors, and Heretics! The French dragooned the Hugonots. The English persecuted both the Irish catholics and Scotch presbyterians. Calvin and the presbyterians domineered in their turn. And thus the work of persecution went round in *enlightened Europe!*

three distinct classes, viz. the Irish, among whom were the descendants of the first English settlers, or "the degenerate English," as they were called, all Roman catholics—the Scotch settlers, nearly all presbyterians—and the new settlers, who were all of the episcopal, or *established* church, and who, though fewest in number, were the greatest in power, as having the government of England to support their proceedings, and for whose benefit, in fact, the whole political system of the country was and is calculated.—And this state of parties is nearly the same at this day.

In order to complete the predominancy of the protestant party, all the former penal statutes were put in force, and new and very oppressive ones were added to them.—By such measures as these, the catholics were completely excluded; and hence arose those formidable party distinctions, of *catholics*, *presbyterians*, and *protestants*, which have ever since divided and distracted Ireland. The religious prejudices of the two first are dexterously played off against each other; whilst the third party, the least in number, contrives to domineer over them both, and turn every circumstance to its own advantage and emolument.

A union was now formed between the ancient Irish, who, after losing their lands and their laws, were to lose their religion, and the old English, whose lords and men of influence were to be deprived of their consequence, whose priests and lawyers were thrown out of employment, and whose numerous people had their churches taken from them by force, and punished for not conforming to the religion of their oppressors!—All these united, under the banner of the *catholic faith*, against the protestants, as against a common enemy.

The English government was so much distracted by the contest between Charles I. and the parliament, that little attention was paid to the affairs of Ireland. Irritated by oppression, and favoured by a combination of events, a general insurrection was planned, and carried into execution by the Irish, in October, 1641; many of the protestants were killed,

but the scheme miscarried, and only added to their misfortunes.*

The catholics of Ireland, at this time, were in fact stretching out their hand to assist King Charles, but the infatuated prince did not see it. He threw himself upon the Scotch, who deserted him. He called upon the Irish when it was too late.

The Irish having been baffled in their attempts upon the Castle of Dublin, both the loyalists and parliamentarians united against them. At length, Cromwell, that fierce and hypocritical usurper, came with a large army, and cut off by the sword the inhabitants of Drogheda, and several other towns. The limits of this Sketch will not admit of our entering into a detail of these bloody scenes; they would only shock the feelings of our readers, and show the depravity of human nature exhibited in a cruel and remorseless war which continued eleven years.

New colonies were transported into Ireland, in order to occupy those lands which were either taken from the catholics, or had become vacant by the destructive effects of the war. All the native Irish were commanded to retire into the province of Connaught, which had become nearly desolate; and a certain day was fixed for them to retire, on pain of death! It was one of those cruel measures which resemble the expulsion of the Moors from Spain; with this difference, that the Moors were the invaders some centuries

* By the English writers, this insurrection has been called a massacre; indeed it was very like one. It is impossible to justify massacre or assassination, yet it may be said, that they have their degrees of guilt, their shades of provocation. The Irish massacre had a different complexion from the horrible butchery of the protestants in Paris, &c. viz. on St. Bartholomew's day, 25th August, 1572, when 70,000 Hugonots throughout France were murdered in the name of Christ! To excite the first, there was a long train of national oppressions and individual misery—on the other, only the cruel bigotry of a king, a priest, and a woman!—See De Thou's History, &c.

before; whereas the Irish were the original inhabitants, and had the only just right to the soil.*

The famous Revolution of 1688, in England, (famous for its beneficial consequences to the liberties of mankind,)† was the cause of another war in Ireland. Driven from a throne which he unworthily filled, James fled to France, from whence, in March, 1689, he sailed with a great armament, and landed at Kinsale. He found the greatest part of the country in his favour; by altering the charters, he had procured a majority of the catholics in parliament, and Lord Tyrconnel, and most of the popish lords, had taken arms in his defence.

James soon found himself at the head of 40,000 men, with whom he marched to the north, where lay the strength of the protestant interest. At the siege of Derry, he wasted his time, and weakened his army;‡ and in July, 1690, he was defeated by his son-in-law, William III. at the famous battle of the Boyne. Soon after, James retired to France, resign-

* By the wars which took place in Queen Elizabeth's time, those of Cromwell, and those of King William, the inhabitants of Ireland were reduced from three millions to half the number at the capitulation of Limerick, when many thousands of the catholics left the country entirely and settled in France and Spain—hence the origin of the Irish brigades in those countries.

† It is not the intention of the editor to justify King William in every part of his character, but only to speak of the beneficial consequences resulting to liberty in general from the revolution of 1688. William showed much liberality in religious matters: He gave to the presbyterians their mode of worship in Scotland; and he granted to the Irish catholics the exercise of their religion as in the reign of Charles II. He endeavoured also to reconcile the jarring controversies of the English episcopalians and the Scotch presbyterians; but herein he failed—the man who moved and directed the intricate politics of Europe, was not able to overcome the bigoted obstinacy of a few priests and presbyters!

‡ The siege of Derry, which continued three months, is remarkable in the history of Ireland for the bravery and hardships of the inhabitants, who, whilst they baffled the attack of King James's army, suffered all the miseries of a protracted siege, the sword, famine, pestilence, &c.—See Journals, written by the Rev. Col. Walker, &c.

ing the government of a great empire to a more deserving rival. It has been said, that King James foolishly bartered three crowns for three masses; even the pope disapproved of his rash bigotry; and the catholics, to this day, look upon his memory with contempt. He pined the remainder of his days, a zealous but a disappointed devotee, in most inglorious obscurity, a dishonourable dependent upon the ostentatious bounty of Louis XIV.

The war continued above a year longer between King William's generals, and the French and Irish forces, who were defeated at the battle of Aughrim. At length, the surrender of Limerick put an end to the war. This capitulation, known by the name of *The Articles of Limerick*, was signed on the 3d of October, 1691. By this capitulation, the rights of the Irish catholics were to be ever after known and established.

The principal articles were, That the catholics should exercise their religion in the same manner as they did in the reign of Charles II.; that they should take the oath of allegiance and enjoy the common privileges of subjects. These articles were observed by King William, who constantly resisted the endeavours of the church party to have them repealed. Indeed, the inclination of that prince for religious toleration, forms the brightest part of his character, and must ever do honour to his memory.

Immediately after his death, this system was departed from. In the reign of Queen Anne, acts of parliament were passed, which gradually violated the articles of Limerick. To complete the system of oppression, the *laws of discovery* were enacted.

By these laws, the catholics were disarmed; they could not purchase land; if one son abjured the catholic religion, he might dispossess his father and all his brothers; if a catholic had a horse in his possession, if worth 50 or 100*l.* a protestant might take the horse from him, upon paying down 5*l.* if the rent paid by any catholic was less than two-

thirds of the improved value, the *protestant discoverer* might take the lease; and various restraints were laid on their education at home, and penalties inflicted for obtaining it abroad!

By these and many other acts, and by the coercive spirit of the English government, the Irish were reduced to a very low condition indeed. Yet, in the midst of this degradation, occasional efforts were made by individuals, to assert something like national independence. Mr. Molyneux published a pamphlet entitled, "The Case of Ireland being bound by English Acts of Parliament," wherein the author vindicates the independence of the Irish parliament in their own affairs. The English government was greatly offended at such presumption; they addressed the king on the subject, and had the pamphlet burnt by the hands of the hangman!

In the year 1719, in consequence of a decree of the court of exchequer, in the Annesly cause, the English lords took offence, addressed the king, and obtained an act, declaring, "that Ireland is subordinate unto, and dependent upon, the imperial crown of Great Britain; and that the king's majesty, by and with the consent of the lords and commons of Great Britain, has full power and authority to make laws and statutes to bind the people and the kingdom of Ireland."

Dean Swift having been disappointed in becoming a bishop in England, resolved to become a patriot in Ireland.* The English council having, in 1723, granted a monopoly to one Wood to circulate a species of half-pence in Ireland, the Dean, through his *Drapier's Letters*, contrived to agitate the

* Upon the expulsion or abdication of the Stuart family, in the person of James II. there arose in England the two great parties called *whigs* and *tories*. King William and the two first Georges were of the former.—Queen Anne of the latter party. During Anne's reign, Swift had distinguished himself as an active partisan in favour of the high church system; but on the coming in of the Hanover family, he found himself on the wrong side; instead of being made an English bishop he got only an Irish deanery. Hence, (like many others,) he became a patriot from disappointed ambition.

public to a violent degree. The question was, Wood versus Ireland, or Ireland versus Wood? The baseness of the coin, and the shamefulness of the job, were the common complaint, but the manner of forcing the coin on the nation was the principal objection. A general outcry was raised against the half-pence; most of the towns protested against them, and the country gentlemen directed their tenants not to receive them.

The situation of Ireland, at this time, was exactly similar to that of America in the case of the tea business; but the ministers of those days were wiser than Lord North and his associates. The former considered the great danger that might arise from a commotion so near to England, when a new family had been but lately put upon the throne, and when one of the Stuarts had already created a rebellion in Scotland.—They wisely cancelled Wood's patent.

But this circumstance excited a spirit of discontent, and the people, even then, made loud complaints. Dean Swift, in his "View of the State of Ireland," aptly compares it to a hospital, in which the household officers (the English place-men) became rich by their emoluments, while the poor inmates, for whom the house was built, were starving for want of food and raiment.

In the year 1751, a contest arose between the English crown and the Irish parliament, concerning unapplied money then in the treasury. To whom did the money belong? His majesty the king of England said it belonged to him. The Irish parliament said it belonged to them, as the representatives of the people. The contest was long, and sometimes warm.—At length, the crown settled the question, by taking the money, about 250,000*l.* to England, and took care never again to leave a surplus in the treasury, but always to have the nation in debt.*

* Instead of a surplus, the Irish government now owes a debt of between fifty and sixty millions, most of which has been accumulated since the year
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The general discontent of the people was, at all times, much augmented by that most odious tax, *tithes to the established clergy*,* whereby the catholics and presbyterians, a vast majority of the inhabitants, were forced to yield the tenth of their labour and produce to a set of men from whom they received no return, not even an imaginary one in the article of religion—on the contrary, the establishment of the episcopalian worship formed their most vexatious burden, as they had to maintain their own clergy besides. The consequence was, that there was ever, in some part of the country, malcontents disturbing the public peace, under the names of *Hearts of Steel, Hearts of Oak, White Boys, &c.* but as they were of the lowest orders, and had no regular system in their operations, they were always put down with loss, and their unsuccessful efforts only added to the strength of the governing power.

The episcopal clergy being thus lifted above their fellows, it may well be imagined that many of them did not conduct themselves with that humility and benevolence which are, or ought to be, the distinguishing characteristics of ministers of the gospel. The presbyterians, in particular, feel the galling weight of these church oppressions, and numbers of them every year emigrate to America.†

1798. Such are the blessings of the union, an increasing debt, and a decreasing trade! England herself owes above 500 millions sterling!

* This must be a very grievous tax where three-fourths of the people are not of the established church; even in England, where the majority is of the establishment, tithes (in addition to their numerous other taxes) are much complained of, and various schemes have been suggested to remove this grievous burden from the shoulders of the people.

* The presbyterians, or dissenters, both in England and Ireland, were always considered as forming a large portion of what is called the *whig* party, attached to the revolution principles of 1688: accordingly, in the reigns of King William and the two first Georges, they were treated with seeming respect under what is called the *act of toleration*. Immediately on the accession of George III. (educated by Lord Bute) the *tory*, or church and

In the administration of Lord Townshend, it became the policy of the English cabinet to exalt the body of the people, in order to break an aristocracy which had long domineered over the country, and even thwarted the English government. The popular Dr. Lucas, in the year 1768, moved for a bill to shorten the duration of parliament, which had hitherto continued during the king's life; it passed the privy council, and, contrary to the expectation of the aristocracy, the bill returned from London with the addition of a year. The Irish parliament then became octennial.

The questions of commercial restraints and the subserviency of the Irish parliament, had hitherto only been discussed in pamphlets—but in the year 1778, the measure of public distress being nearly full, united all ranks in their endeavours to procure a removal of those shameful restraints by which the trade of Ireland was bound up and prohibited by England.

In parliament, the disadvantages under which the trade of Ireland lay, was canvassed with unusual warmth, and the subject was taken up by the people. Melancholy pictures presented themselves of the deplorable condition of the country, of the ruinous state of manufactures, and the stagnation of credit. All these circumstances of public distress were justly ascribed to the false and cruel policy of the British ministry.

state system, became the order of the day at St. James's, and the dissenters were discouraged. Having approved of the American revolution, and the first openings of that of France, they acquired the jealousy and hatred of the ruling party, and suffered something very like persecution.—See riots at Birmingham, the burning of Dr. Priestly's meeting-house, &c.

Note.—Whilst their church rulers are jealous of these people if they stay at home, their military rulers will not permit them to go abroad. Ireland is considered as the grand nursery of sailors and soldiers for the British fleets and armies: accordingly, very severe laws have lately been made to prevent emigration. It will therefore be a comfort to some people to hear, that we shall not in future be troubled with so many ship-loads of wild Irish as formerly.

The embargo laid upon the exportation of provisions in the year 1776, was attended with most destructive consequences; "it was sent as a curse, and operated as a pestilence;" it excited very general complaints, as it was well known it was laid to enable some English contractors to amass princely fortunes on the miseries of Ireland!

But another cause strongly operated to excite the people of Ireland to reflect on their situation. The contest with America, by the numerous writings published on that occasion, cast new and effulgent light on the *RIGHTS OF MAN*. If the Americans had revolted in order to *prevent* grievances, what should the Irish do who had actually groaned under a most oppressive load of wrongs for ages?—National considerations were blended with commercial ones, in the just complaints of the Irish. The numerous restraints on their trade, which were modified, explained, and confirmed, in fifty or sixty acts of the British parliament, were too obvious tokens of slavish dependence and provincial subordination on a *foreign* government, which often indecently sacrificed the interest of all Ireland to a single manufacturing town in England!

In the midst of this national distress and degradation, there arose a powerful advocate in favour of an oppressed people. THE IRISH VOLUNTEERS, that phenomenon in the history of nations—50,000 men, with arms in their hands, while they protected the kingdom from foreign invasions, declared their intention of giving freedom to their country!

On the 12th of October, 1779, the parliament of Ireland met. The eyes of the people were turned towards them, in anxious expectation of their determination—the spirit of the nation communicated itself even to a body hitherto very subservient. The address from the commons contained the following expression:—"We beg leave to represent to your majesty, that it is not by temporary expedients, but by a *free trade alone*, that this nation is to be saved from impending ruin."—The address from the lords said, "we think

it our duty to represent to your majesty, that a *free trade* is absolutely necessary to enable this nation to support your majesty at this important period with exertions suited to its loyalty, and preserve it from utter ruin."

These addresses were presented to the lord lieutenant, in order to be transmitted to the king. It may be said, that they were presented at the point of the bayonet, as the volunteers lined the streets from the house of parliament up to the very gates of the castle!

This bold step, together with a limited money-bill, had an effect. Lord North brought before the British parliament certain resolutions tending to alleviate the sufferings of the Irish nation. His measures, however, were few and unimportant; and it was evident that he was not sincere in the business. At length, on the 15th of February, 1782, the famous volunteer convention at Dungannon gave a new spring to the national spirit.

This convention consisted of 145 representatives from volunteer corps. They asserted the right of citizens to bear arms, and they rejoiced in the relaxation of the penal laws against the Roman catholics. Their address to the minority in parliament is peculiarly energetic, and is worthy of record—more for the manly spirit of its intentions, than for the fulfilments of its objects:

"My lords and gentlemen—We thank you for your spirited, though hitherto ineffectual efforts in defence of the great constitution and commercial rights of your country. Go on—the almost unanimous voice of the people is with you, and in a *free* country, the voice of the people must prevail. We know our duty to our sovereign, and are loyal; we know our duty to ourselves, and are *resolved* to be free. We seek for our rights, and no more than our rights; and, in so just a pursuit, we should doubt the being of a providence, if we doubted of success."

The convention passed the following resolution, with only

two dissentients:—"Holding the right of private judgment, in matters of religion, to be equally sacred in others as in ourselves:—Resolved, therefore, that as men and as Irishmen, as christians and as protestants, we rejoice in the relaxation of the penal laws against our catholic fellow-subjects."*

The consequence was, that the English cabinet saw it necessary to give another extension to the trade and freedom of Ireland, and to relax the catholic penal laws still further. The successful resistance and independence of the American States, had lowered the pride of the English ministers, and finally drove Lord North and his party from the helm of government.

The death of the Marquis of Rockingham broke up the whig ministry in England, and a new lord lieutenant (Earl Temple) was sent to Ireland. Another change of ministry taking place, Lord Temple was recalled, and, in June, 1783, Lord Northington was sent in his room.

But still the late measures were only palliatives, granted by the English cabinet reluctantly, and evidently against the grain. A great complaint in both countries is, the inadequate state of the representation of the people, and the gross corruption of parliament, the majority of which is either the creatures of the peerage, or the pensioners of the treasury.

The many fruitless applications of the people to parliament for the correction of abuses; the inadequacy of their representation; the large portion of the house of commons composed of boroughs the property of the peerage;

* It should not be forgotten, that the volunteers of the north of Ireland were nearly all presbyterians, and that with these men originated the idea of a general right of suffrage. They had the courage to overcome ancient habits and religious prejudices, and declare "that the catholics were their brethren, and ought to be admitted to the rights of men and citizens."—It is certain, that the presbyterians did not receive the approbation of the establishment for their conduct on this occasion; on the contrary, government now beheld them with marked dislike and jealousy. Whether the catholics themselves looked upon the measure in its proper point of view, or what use they would have made of power if they had got it into their hands, has not yet been developed.

and the uniform corruption of administrations, who had the treasury always at their disposal—These considerations pointed out the necessity of a grand endeavour to purify the representation of the people, and to bring the constitution to the practice of those beauties, of which it boasts so much in theory.

To obtain this great and necessary object, county, city, town, and even parish meetings were held. The greatest orators in parliament, viz. Mr. Flood, Mr. Grattan, Mr. Curran, &c. exerted their splendid talents—but in vain—government always contrived to frustrate their measures, and at last beat them down by force, and passed laws to prevent the assembling of freemen and freeholders!

About these times, the Duke of Richmond, Mr. Pitt, &c. called themselves “the friends of the people,” and advocated a reform of parliament—but no sooner did they step from the ladder of popularity to the treasury bench, than they changed their sentiments, or feebly supported what it was visible they did not wish to succeed.

The Earl of Charlemont had hitherto been the chief head or leader of the volunteers. At a review at Belfast, when they addressed him, expressing their satisfaction at the decay of religious prejudices, and their wish that all men of all professions should be entitled to the right of suffrage, his lordship was pleased to dissent from these opinions! The man who had hitherto gone along with the volunteers in so many patriotic efforts, suddenly stopped short when they talked of *religious liberty*, the very essence of all liberty!—Thus, religious bigotry, *protestant* bigotry too, like an evil genius, stalked in to baffle the generous wishes of an enlightened people. The schism was fatal;—from this time every patriotic measure proved abortive, and disappointment and discontent took place of hope and expectation.

The payment of tithes to the *established* clergy also continued to be a source of very general discontent, particularly

in the western and southern parts of the country, where a vast majority of the inhabitants are Roman catholics, and where they are poor and depressed almost to the lowest state of human wretchedness. As a due respect to religion, and the rational practice of it, are most important benefits to the community, the maintenance of its ministers ought to be liberal, and becoming their station and character—but in the tithe system, under a proud and high-minded hierarchy, the procurator, like the middle-man, is too often the scourge of the indignant peasant; unmoved by the inability of the cultivator, subject to a thousand accidents, he treads upon the heels of providence, and seizes with a greedy hand, what the judgments of heaven may have left to the unfortunate farmer.

Mr. Grattan, at different times and seasons, proposed several measures in parliament, towards ameliorating the condition of the poor farmer as to this hateful burden—but the *church and state party* were ever too strong, and rejected all modifications whatever.

Although the catholics had been relieved from certain pains and penalties on account of their religious tenets,* yet

* Two heavy charges have been brought against the catholics, viz. that “they consider their obedience to the bishop of Rome as paramount to all allegiance to any king, prince or government whatever,” and “that there is no salvation beyond the pale of their church.” If these charges be true, the catholics must be unsafe subjects in any free country. The genius of the catholic religion is favourable to despotism; whereas protestantism promotes inquiry, and is friendly to liberty. The English and Irish catholics have been at much pains to deny and explain away these charges. Liberal and well informed catholics cannot believe such doctrines; but with the ignorant and the bigoted, they have had, and may again have, the most dangerous effects. In the times of popish power, we know that these were the tenets of the catholic church; and two circumstances have lately taken place, that gave at least a colour that they are yet believed: —1. The gradual restoration of the Jesuits to their former spiritual and temporal influence. 2. In the month of October, 1804, previous to the pope's setting out to Paris to crown “his dear son in Christ, Napoleon. Emperor of the French,” in what is called an *allocution* to the sacred consistory, amongst a number of reasons

they were still kept in the back ground, like a proscribed people in their own country—they had received favours, but they were bestowed reluctantly and ungracefully. Repeated efforts were made in parliament in their favour, by Mr. Grattan and other popular members; and Lord Fitzwilliam came from England, with powers, as he imagined, to give them, at once, full and ample emancipation. To his surprise, he found himself opposed by a secret influence, and by the prevailing aristocracy, who, under the imposing title of *the protestant ascendancy*, not only thwarted all his projects, but had him recalled with something like disgrace!*

This disappointment sunk deep into the minds of the catholics, and inclined many of them afterwards to enter into desperate measures of revenge—no less than the separation of Ireland from the dominion of England.

From this rapid sketch of the history of Ireland, the *American* reader will be able to understand the rise and progress of those parties and distinctions, which have unhappily continued, for so long a time, to distract one of the finest countries in the world—a country which, whether we consider its geographical situation, the salubrity of its climate, or the abundance of its productions, is admirably calculated (if not obstructed

which his holiness is pleased to assign for going on such a mission, he gives the following, viz. “his gratitude to that powerful prince, who has put forth all his authority for the good of the catholic church, *which is the only ark of salvation.*”

* It was a matter of much surprise, that so wise a man as Lord Fitzwilliam should go to Ireland on a business which he did not understand. It is now known that Mr. Pitt was then for catholic emancipation, but that the king was and is decidedly against it. Mr. Pitt has sacrificed his honour and consistency for the love of place, and by voting against his own principle. To the disgrace of the British commons, on the late application of the catholics, (May, 1805,) only 124 men out of 658 voted in favour of this just and necessary measure. Mr. Fox's speech, on this occasion, is one of the best he ever delivered; his history is accurate, and his arguments are incontrovertible.

by the evil policy of man) to yield more than every necessary enjoyment and comfort to its inhabitants.*

The happy termination of the American struggle for liberty, the then flattering appearance of the French revolution, the increase of knowledge, and the consequent decay of religious prejudices—all combined to render the conduct of the English government odious to a great part of the Irish nation. Hence, when the catholics found themselves disappointed by the recall of Lord Fitzwilliam, that they were not to expect any amelioration of the grievous tithe laws, and that a reform of parliament was not to be obtained, then arose the society of UNITED IRISHMEN, who, by a bond of union, and a brotherhood of interests, brought together all men, of whatever religious profession, who were desirous of emancipating their country. They entered into communications with the then rulers of France,† who flattered them with the hopes of a powerful assistance. The French did send a fleet to Bantry Bay, but, whether through accident or design, the scheme miscarried. Shortly after, the Irish malcontents tried the business on their own strength, which brought on that most dreadful of all conflicts, a civil war, wherein many brave and good men on both sides lost their lives, and infinite misery, in every shape and modification, ravages, rapes, robberies, burnings, whippings, hangings, and every species of torture, fell, with tenfold fury, upon a long depressed people!—What was to be expected, when one side was actu-

* There is a strong similarity betwixt Ireland and Sicily, both celebrated for the fertility of the soil, and the beauty of the country—but both being situated in the neighbourhood of powerful and ambitious nations, they are constantly kept in a state of foreign subjection.

† It is necessary to remark, that the Irish directory (as they were then called) stipulated with the French directory for only a certain number of auxiliaries, in like manner as did the American congress: but they never came at a seasonable time, or they came in such small numbers, that they only fell a prey to the English force.

ated by a keen sense of oppression and the spirit of revenge, the other by the pride of power, and the lust of dominion? The royal army,* and the *Orangemen*, committed numerous outrages and cruelties, in defiance of every principle of justice and humanity. The Irish insurgents were enterprising and courageous, but they wanted system, discipline, unanimity, and experienced leaders; and it must be confessed, that on some occasions, they gave way to a spirit of useless and bloody revenge, which brought disgrace on their cause. Their attempts, after a deal of blood being shed, everywhere failed; thousands of unfortunate rebels were put to the sword and the bayonet; many of them died upon the gallows; numbers fled the country; and many were transported as felons to foreign climes.

The particulars of this melancholy history are not only too numerous to be repeated here, but they are of too tragical a nature to give satisfaction to any class of our readers.—We give this sketch merely as a necessary introduction to the better understanding of the following pages.

A union of the two islands had long been wished for by the British cabinet, but as a great majority of the Irish people, and even of the Irish aristocracy, were adverse to the measure, it seemed to be a very doubtful and difficult undertaking. But the late attempts of the Irish malcontents, their open declarations in favour of a republic, and the fears of their forming a junction with the French directory, a junction that would have been fatal to Britain, hastened the execution

* An honourable exception must be made in favour of General Sir Ralph Abercrombie, he who fell so gloriously (according to military language) in Egypt. Having been appointed commander in chief in Ireland, he declared in public orders, "that the very disgraceful frequency of courts martial, and the many complaints of irregularities in the conduct of the troops, had unfortunately proved the army to be in a state of licentiousness, which must render it formidable to every one but the enemy!"—After a short stay in Ireland, this humane Scotchman threw up his command, and left the country.

of a long projected design. Accordingly, every engine was set to work, in order to bring about a union of Britain and Ireland. The chief effort, and the most expensive one, was to be made in the Irish house of commons. On the first trial of strength, there was a majority of forty members against the union. The English minister put off the measure till the next meeting, in order, as he significantly said, to give the nation time to consider of it. In the session of 1800, it was evident that the English cabinet had not been idle in the employment of their means. On one side, were bags of gold, peerages, and preferments*—on the other, 100,000 bayonets, restriction, and depression—powerful arguments!—On the next division, there appeared a majority of forty *for* the union! and thus the parliament of Ireland, like that of Scotland, sunk, an insignificant atom, in the overwhelming influence of England.

A number of authors might easily be quoted, who have written on the affairs of Ireland. After a painful investigation, they will be found to consist of two distinct parties; one sensible of its strength, vindicating the claims of England to the uncontrolled dominion and property of Ireland; the other, making loud complaints of a long series of violence and injustice, and asserting the natural claims of Ireland to be free and independent. The English writers have endeavoured to cover the conduct of their government with the cloak of conquest, commerce, civilization; and even religion has been brought

* Similar means were used to accomplish the union of Scotland with England in the year 1706, when a number of new peers were made, and a deal of gold *judiciously distributed*. The court calendar can show how many new lords were made at the Irish union, but it is not so easy to ascertain the sums of money *distributed* to those worthy patriots, who first voted for their country, and then against it; report states above a million and a half, besides the price of the boroughs, 1,250,000*l.* in all about three millions sterling—One thing is certain, that the Irish people were bought and sold with their own money; and what have they gained by the bargain?—Their taxes are trebled, and they already owe a national debt of near sixty millions sterling!

In to justify injustice, and to sanctify ambition !* But a long and a black list of acts appear on the statute books, which no sophistry can palliate, no pretext can vindicate.

History has been called the eye of wisdom, and the finger of knowledge ; but partial history can neither be the eye nor the index of wisdom. History should be divested of national prejudices, party misrepresentations, and religious antipathies. Truth, unbiassed by all partial interests and local connections, should be the historian's guide—*Amicus Plato, amicus Socrates, sed magis amica Veritas*—and if the truth may not be spoken in the republic of America, in what country in the world may it now be uttered ?

The people of America, beyond all others, must feel for the condition of the unfortunate Irish. If the Americans revolted against the mother country in order to *prevent* grievances, what should the people of Ireland do who *have suffered* for ages under an accumulation of oppression and contumely, not to be paralleled in the history of Europe ? What would the Americans have thought and felt, if their *revolution* had only been a *rebellion*, and that Washington, and Franklin, and Adams, and Jefferson, and a long list of sages and heroes, had suffered an ignominious death on the gibbet ?—And will they

* The established hierarchy always take an active part against catholic emancipation, even in its simplest and safest gradations. It gives us pleasure to point out one exception, the Bishop of Landaff, who joins to the knowledge of a philosopher the virtues of a christian. This learned and truly venerable prelate made the following declaration—listen, ye bigots of every persuasion :—“ We think the catholics to be in error: they think the same of us. Both ought to reflect, that every error is not a criminal error; and that their error is the greatest, *who most err against christian charity*. If any one should contend, that this is not the time for government to make concessions to Ireland, I wish him to consider, whether there is any time in which it is improper for either individuals or nations to do justice, any season more suitable than the present for putting an end to heart-burnings and internal discontent. I should be as averse as any man from making concessions to an enemy invading the country; but I would do much to gain a friend to assist me in driving him back; and such a friend, I am confident, Ireland would become.”

have no compassion, no fellow feeling for Lord Edward Fitzgerald, Arthur O'Connor, Oliver Bond, Russel, Emmet, Tone, Teeling, the two Sheares, and hundreds of others, many of them of the most amiable and respectable characters; some of them of noble birth and high expectations—who ventured their fortunes and their lives, in order to redress wrongs so long and so grievously felt?

Let it be understood, that, in the foregoing sketch, a wide distinction is always made between the English *government* and the English *people*. Whatever is great and good has had its origin amongst that illustrious people—a people alike famous for arts and for arms; for their enterprise, industry, and ingenuity; and celebrated for the deepest researches and discoveries in whatever is useful, learned and scientific. Need we appeal to the history of their divines, philosophers, patriots, and warriors? America herself must own, that when liberty was extinct in every other nation in the world, England was the parent and the nurse of civil and religious freedom, sealed and sanctified by the blood of her martyrs and patriots. The general character of the English nation must not be contaminated with the avarice and ambition of statesmen and warriors. Many Englishmen, both in and out of parliament, have lifted their voice against the cruel and unjust policy of their countrymen both in Ireland and India. Amongst a number of writers we shall only select one, as being the latest, who, although he has taken his authorities from a very partial source, (Sir R. Musgrave,) yet he breaks through a cloud of prejudice, and discovers the honest indignation of a virtuous Englishman at the tyrannical conduct of his government towards Ireland:

“The history of no nation in Europe exhibits such a uniform series of misery, oppression, and misfortunes, as that of Ireland. It would now be equally vain and unprofitable to inquire, whether Ireland yielded by treaty, or was overcome by the sword?—The fact is, that the natives were treated like a

conquered people, and denied a participation in the English laws. Stigmatized as helots, even intermarriage with them was deemed felony, and their murder has been adjudged no crime ! Amidst such cruel and impolitic restraints, it was not to be expected that the people would emerge from barbarity ; on the contrary, they were rendered discontented and ferocious by oppression ; and three successive insurrections, the fruits of a false and perfidious policy, prove better than any testimony, that their bondage was equally galling and ungrateful. All the bitterness of religious intolerance was superadded to civil disabilities ; and a black catalogue of penal statutes exposed the unhappy catholic to a variety of fines, mulcts, and disfranchisements, from which the more fortunate, but far less numerous class of protestants were exempt.”*

After all, it appears to be the interest of Ireland to be connected with England, if such a connection can be obtained on fair and honourable terms. The exalted rank which England holds in the national society of Europe, we may say of the world—her proximity to Ireland—her astonishing wealth and vast navy—her arts, commerce, and manufactures—her general learning, knowledge, and refinement—the spirit of her judiciary system, which is admirable under a pure administration—all point that country out to Ireland as her best, most natural, and most powerful ally.

On the other hand, may we not hope that the government of England will at length know their true interest, and perceive, that honesty is as necessary a principle in public as in

* See Stephens's history of the wars that arose out of the French revolution, chap. 12. a work of considerable merit and utility.

It is to be regretted, that so respectable a writer should have followed so bad an authority. Sir R. Musgrave was paid a very high price for his work by government, but he is so grossly partial in his accounts, that even Lord Cornwallis withdrew from him his sanction. Having said something offensive to Mr. Tod Jones, that gentleman called Sir Richard out one morning, and sent him home with a piece of lead in his body, very near that part which gave the widow Wadman so much uneasiness on Uncle Toby's account. Mr. Jones has ever since been in prison *on suspicion*.

private transactions, to nations as well as to individuals; that they will see the folly, the wickedness and the impolicy of dragooning and domineering over a people, so necessary to their glory, even to their existence as a nation and that ages of coercion and tyranny will be followed by a system of justice and generosity. If half the partiality that has been shown to the Scotch highlanders for the last fifty years, had been extended to the Irish catholics, they would, at this day, have been the most loyal portion of the British empire. *"But contumely and reproach are grievous, and a wounded spirit, who can bear?—Discord ariseth out of evil government, and oppression maketh men mad."*

Those who are inclined to know more of IRISH affairs, may consult Musgrave, a court hireling, Gordon, a church clergyman, and Hay, a catholic gentleman. Plowden's history, from its size, 3 vols. 4to. must contain the most particular and detailed accounts; but those who wish to know the true grounds of the subject in a few pages, will read a pamphlet entitled, "An Inquiry into the Causes of the Popular Discontents in Ireland." In this brief but luminous publication, the author clearly describes the causes of these discontents, and then points out the remedies that should be applied, and would be applied by such men as Bishop Watson, Mr. Fox, &c.

The reader, however, will keep in mind, that no man in the British dominions dare publish all that can and ought to be made known concerning the history of Ireland. We are told that the ways of providence are dark and mysterious: "puzzled in mazes, and perplexed with errors," man, feeble man, cannot fathom these mysteries—but we know, that its judgments sometimes fall heavily on nations as well as on individuals. As the condition of Ireland seems to be fixed and bound by an inexorable destiny, and if it be true, "that whatever is, is right," the sooner the Irish people drink of the waters of Lethe the better, and wisely consign all bitter but unavailing remembrances to oblivion.

A BIOGRAPHICAL SKETCH,

OF

MR. CURRAN.

Vetera extollimus, recentium incuriosi.

IT is a very general opinion, that the study of law is adverse to genius; that a lively imagination cannot be tied to professional pursuits; and that wit cannot be possessed but to the exclusion of industry.

Among the many examples which might be adduced to prove the falsity of this conceit, Mr. CURRAN is not the least striking.

No man has acquired higher reputation for those powers which delight and captivate the fancy, that touch the springs of passion, elicit tears from sensibility, or extort from gravity itself the burst of laughter—yet have the exertions of this gentleman raised him from the humblest walk of life, if not to the first place, certainly to the first rank, at the Irish bar. He has not, indeed, attained high official situations, or risen to those honours which are oftener the reward of *judicious* politics, than of *professional* ability; but he has acquired that which is a much stronger proof of talent, the uncontested title of being *the first advocate in his country*.

Mr. Curran is now above fifty years of age. He was born in the county of Cork, of parents who were undistinguished by wealth or situation; who had neither a fortune by which

they could enable their son to live independently, nor connections by which they could advance him in a learned profession. They were, however, capable of giving him the rudiments of a liberal education; and that seems to be the only advantage which he derived from his family.

Having qualified himself for the university, he entered in the only character in which his circumstances enabled him to appear, that of a *sizer* in the college of Dublin; a situation of which the emoluments are very trivial, while the marks of inferiority which distinguish it from that of the other students are of the most mortifying kind. The *sizers* have, indeed, their tuition free of expense; but they are obliged to keep the rolls of their tutors, and attend to the weekly distribution of the fines and punishments of the pupils. They have their commons *gratis*, but they dine only on the fragments of the fellows' table, and are compellable to discharge several menial offices in the dining-hall!

In this situation Mr. Curran passed the first year at the university: nor did he appear, in point of pecuniary circumstances, to stand at the head of even that humble class. It is a fact, that the man who possessed powers that could mould the heart, charm the imagination, and guide the judgment of a court or a senate, was often destitute of a whole coat!

At the usual time (two years after entrance) he obtained a scholarship, by which, and by the emoluments arising from some petty offices generally bestowed on scholars, he emerged from the distress in which he had hitherto been involved. The remainder of his college life is not marked by any peculiar incidents; he obtained the usual honours with which the policy of the university rewards industry and talents, and he is said to have made some progress in reading the laborious course which is prescribed for fellowship candidates: but, whether disgusted with the drudgery, or deterred by the magnitude of the undertaking, he soon desisted from college pursuits, and turned his attention to the bar.

Previously to his becoming a student in the *inns court*,

London, Mr. Curran married a lady of his own country. This match appears to have been founded in inclination, for she did not bring him a fortune to compensate the inconveniences unavoidably attending so premature a connection. Of the means by which he supported himself and wife during his studies in England, and afterwards to defray the expense of his call to the bar, nothing certain is known; it is natural to suppose, with talents like his, that in such a place as London, it would not be very difficult to procure a livelihood by his literary exertions. But whatever might have been the mode by which his finances were supplied, it is certain, that when he first came to the bar, he was in great poverty. He then resided in Kevin-street, Dublin, a place only occupied by the lowest class of people, and which, in point of *gentility*, is on a level with the least reputable part of Westminster.

Mrs. Curran had now brought him a child; and being unable to indulge in the practice so common in great cities, of sending the children out to be nursed, she was obliged to undergo the labour of discharging at once the duties of nurse, cook and housewife!

About this time Mr. Curran became a member of a convivial society, originally formed by young lawyers, called the *Monks of the Screw*—they were poor, but merry; the object of their meetings was to forget, in what is called “good fellowship,” the cares and crosses of life. The devotion of these monks, however, was promoted by a humbler liquor than the juice of the grape, and their temple was nothing more than an upper room in a Kevin-street ale-house! Poor as such a society must have been, the circumstances of Mr. Curran were so humble, that they were bettered by his connection even with it. As the club affected to be select, it became at length necessary, that they should have an apartment to themselves; they therefore engaged one at a certain rent, and Mr. Curran was complimented with the use of it, for the residence of himself and family, except only during those evenings when the club met. He must have been poor indeed, who lodged in such a mansion!

Mr. Curran, however, was not the only man of talents, who, at that time, belonged to this society, and who arose to eminence. The present chief baron of the Irish exchequer, Lord Yelverton, the early and intimate friend of Mr. Curran, was one of its original members. Though more fortunate in his *political* pursuits, the connection formed and cemented between them in their early years has continued through every vicissitude of succeeding life.

That learning and talents are often enabled to raise themselves into notice, without the fortunate coöperation of extrinsic circumstances, is an observation which has been often exemplified in every profession; but perhaps, more frequently in the law than in any other. Our young barrister, with all his capabilities, however, remained entirely unnoticed at the bar. The attention of the public was at length turned towards him in rather a singular way.

He had been engaged as agent by one of the candidates at a contested election, and, in the course of the poll, it became necessary for him to make objections to a vote preferred by the adverse party, which he did in that strong sarcastic manner for which he is so remarkable. His antagonist, a man of overbearing manners, felt the pungency of the barrister's wit, and not recognising merit under a shabby coat, and rather a mean appearance, he applied to him some very gross epithets. With more spirit than discretion, Mr. Curran leaped from his seat, seized him by the collar, and would have struck him, but for the interposition of the bystanders; but he disclosed his mind and character in some very *pithy* sentences. The gentleman not only acknowledged his mistake, but generously granted him his friendship, and was of essential service to his future pursuits in the line of his profession.

From this period Mr. Curran began to rise rapidly. Within less than six months, he quitted his gratuitous lodgings in Kevin-street, and removed nearer to a more reputable part of the town. Mrs. Curran no longer dishonoured her lord's

circumstances, by appearing in the discharge of those domestic offices which are usually performed by deputy—nay, in less than a year, the rising prosperity of the family was visible in the luxury of a one-horse chair! Merit was now finding its proper level, and in this instance at least, we do not behold a great genius struggling with adversity, or sullied in the estimation of vulgar minds, by undeserved poverty.

Mr. Curran's rise must have been rapid indeed, for in the year 1784, we find him dignified with a silk gown as king's counsel, and seated in the house of commons, where he seconded, with sportive humour, or sarcastic wit, every effort of the minority, or popular party, for the civil and religious emancipation of their country.

During the interesting period in which Mr. Fitzgibbon filled the office of attorney-general, Mr. Curran was one of the leaders of opposition; of course, he came into frequent collision with that dogmatical and haughty lawyer. The high tone of language with which the attorney-general endeavoured to overbear his political opponents, was more frequently combated by the wit, than by the arguments of Mr. Curran. If in this mode of warfare he did not always repel the blow, he at least evaded its force, and though he could not on every occasion boast of victory, he escaped defeat. In one of those contests, Mr. Curran sent home his wit, his ridicule, and his irony, in so sharp a style, that it produced a challenge. They fought in the Phoenix Park, and even there Mr. C. could not forbear his jokes, to the amusement of the seconds: as to his antagonist, he never was of a laughable humour on any occasion. Luckily they fired without effect, and there was no blood shed. Fate, it seems, had decreed, that Mr. F. should not die in the field of battle.

While Mr. Curran was continuing to be successful in his profession, he did not suffer any opportunities of enjoying pleasure to pass him. He was eagerly sought for in every company, and, by his never-failing fund of wit, he generally kept the table in a roar till the "envious sun peeped in at the

windows." He was indeed a man of uncommon gayety; he possessed an exquisite ear for music, and being no ordinary performer on the forte-piano, it was not strange that Mrs. Billington, who has captivated all the world by her magical powers, should, for a time, enchant Mr. C.

It has already been observed, that in his parliamentary character, Mr. Curran has always been attached to the popular cause. Indeed, from his first outset in life, he has been a steady friend to the legislative independence, to the free commerce, and a reform in the representation of Ireland. He uniformly declared against Mr. Pitt's crusade against France; and, with unremitted vigour, he opposed the fire and sword system against Ireland. Finding the inefficacy of his efforts, he withdrew, along with Mr. Grattan and some others, from the house of commons, and has since been known to the public only as an advocate. In this capacity, he has defended, with unrivalled talents, many of his countrymen, who, instead of glorying in a *revolution*, have unfortunately found themselves involved in all the horrors of a *rebellion*.

As a *lawyer*, Mr. Curran has not particularly distinguished himself; in this respect, he stands only on an equality with his brethren—it is as an advocate that he outstrips his competitors. In this character, he has not his equal in the three kingdoms. With Mr. Erskine he has been compared; but in the opinion of many judges, who have attentively considered the merits of both, the latter holds only the second place.

Mr. Erskine is an acute, grave, laborious, and frequently, an eloquent pleader; he turns the bright side of his client's case to full view, urges its strong parts with the force of a masculine understanding, and covers its weakness with very ingenious sophistry; but the jury still remember that Mr. Erskine is an advocate, and are on their guard against his arts. Mr. Curran, while he displays as much acuteness as Mr. Erskine, gets nearer to the hearts and passions of his auditors; and, by the ardour and animation of an eloquence neither forced nor fictitious, excludes every feeling and every

thought, but those which he wishes to excite. In the examination of witnesses, also, Mr. Curran is eminently powerful. In his manner he resembles Mr. Garrow, but excels even that gentleman in probing a rotten cause to the bottom, in eliciting truth from prevarication, and touching the secret strings that actuate the human heart.

Of all the orators of the present day, Mr. Curran is thought to have the greatest resemblance to Mr. Sheridan, (both Irishmen,) considering the one in parliament, the other before a jury. They have nearly the same flow of ideas, and similar flights of genius, alternately witty and pathetic, ironical and majestic. Whatever may have been the original, or the local merit of *Demosthenes* and *Cicero*, we do not now feel ourselves agitated by their orations; even in their best translations, their language is faint and uninteresting, when compared with *Curran* and *Sheridan*; the one, when he describes the miseries of the persecuted Irish; the other, when he paints the sufferings of the oppressed Hindoos.

But Mr. Curran's parliamentary speeches seldom possess the excellence which marks his professional defences.* They display much less of the *mens divinator*—they are irregular and desultory, and seem to be rather the play of his mind, than its serious exertions. They, however, abound with admirable strokes of sarcastic humour; and, though they assist but little in guiding decision, yet they produce a good effect, by holding up venality and corruption to public detestation.

Of classical learning, Mr. Curran seems to have early laid in a good store; his allusions to the Roman poets are frequent, and his quotations from thence are prompt and happy. It is a curious circumstance, that to study the Latin authors, and to commit to memory their remarkable passages, formed a part of Mr. Curran's preparation for the bar; and that he continues, from his experience of its utility, to recommend this practice to the student of law.

* Here the comparison with Mr. Erskine holds good. This gentleman does not excel in parliament; like Mr. Curran, it is only before a jury that he convinces, delights, and astonishes his auditors.

Deceived by his *tout ensemble*, several young Englishmen, who thought it a duty incumbent upon them to take every opportunity of quizzing the Paddies, have ventured to break their Birmingham wit upon our hero, but they soon found that they "had caught a tartar." His keen, sarcastic wit, and expressive gestures, turned the laugh against themselves, and made them quit the field with disgrace.

The people of England, in general, although situated almost within sight of Ireland, are wonderfully ignorant of that country, and have the most absurd notions of the size, strength, and manners of her inhabitants. Accustomed to condemn the Irish, and blinded by pride and prejudice, Englishmen will not believe that any man can be born in Ireland with a capacity above the rank of a drayman or a haymaker. And when such men as are named below,* are mentioned as being natives of Ireland, *John Bull* is surprised and incredulous, for he thinks no man with brains can possibly be born out of Old England !†

* Besides a long list of statesmen and warriors, driven to foreign countries, by restrictive laws, Ireland can boast of her Usher, Boyle, Denham, Congreve, Molyneux, Farquhar, Steele, Sloan, Berkley,†Orrery, Parnel, Swift, Helsham, Robinson, Johnson, (Chrysal,) Sterne, Goldsmith, Tickel, Brooke, two Lelands, Hamilton, Kirwan, Bickerstaff, Macklin, Malone, Mrs. Sheridan, two Sheridans, Griffith, Courtnay, Burgh, Burke, Flood, Grattan, Curran, and others. What country in the world, of the same extent, can produce such a constellation of genius? And yet this is the despised nation !

† The English have contrived to throw the character of blundering on a nation who have been rendered unfortunate by their subjection to English injustice. A blundering Irishman is a constant fund of amusement on the English stage; many a play would be *dammed* but for an Irishman's mistakes; and many a paragraph writer would starve, but for his far-fetched witticisms on the natives of Ireland. A late writer has defined a blunder to be "a laughable confusion of ideas,"‡ to which the vulgar and the ignorant of every country are liable, and none more than the English themselves—but that the Irish can attain to the utmost purity and elegance of speaking and writing the English language, let the foregoing list of names and the following pages testify.

‡ See Paddiana, and Edgeworth's *Dissertation on Bulls*.

With respect to person, Mr. Curran, like Mr. Grattan, is not much indebted to nature. His stature is low, and his whole appearance far from prepossessing. He has, however, an eye which emits the fire of genius, and is admirably calculated to transmit either the scintillations of fancy, or that deep and touching pathos of the heart, which he not only feels himself, but can so powerfully excite in others. Of dress, he is remarkably, perhaps culpably, negligent; he has often played Cicero in the senate, in the garb of Scrub! His negligence in this respect has sometimes led him into street adventures of a funny and ridiculous nature—but Mr. C. is exceedingly fond of whatever is humourous. He tells several stories of himself with infinite spirit, much to the amusement of the company; and all the high wits, and all the low wits of the city, can repeat a deal of comical sayings and doings of the great orator Curran.

FROM THE RICHMOND ENQUIRER.

CHARACTER OF MR. CURRAN.

IF it were worth while to combat the notion, that descent, that nobility, should alone be a passport to honour and virtue, the history of this man would furnish the refutation. From no worm-eaten statutes, from no musty records of nobility, does he derive his title to honour, or his claim to reputation. He searched no herald's office for the purpose of ascertaining the age of his tribe; he bribed no court favourite to revive some title which was extinct, in his favour. The star and garter, with all those other gewgaws which amuse so many children in the shape of men,* held out no temptation to him. Overlooking all such puerile and anile distinctions, he threw himself on the resources of his mind, resting his claim on the judgment of his cotemporaries and posterity.

To the unaccommodating spirit of the Spartan is joined in him, the polish, the delicacy of Athenian manners. Now, he reaches the point in debate by a few bold and nervous sentences, expressed with laconic vigour and epigrammatic spirit: Now, his words appear to move only to the melodious and measured cadences of Attic harmony. The Spartan economy is forgotten, and an imagination, luxuriant beyond all account, is permitted to range as it were in despite of control, and in derision of method, in all the sportiveness of mirth, and all the poignancy of satire.

* See p. 4. of the Historical Sketch.

The voice of this man happily corresponds with his genius; easily, by its compass and flexibility, accommodating itself to the several passions which he wishes to convey. It is a clear medium by which he is enabled, to transfuse his spirit into his hearers, and kindle in their hearts an enthusiasm in defence of liberty, which, like the Greek fire, is not afterwards to be extinguished.

When his soul is inflamed with the frantic excesses of tyranny, the darkness on his brow gives notice of the tempest that is gathering; while the lightning in his eye, an unerring precursor, announces the thunder that is to follow. His invective is keen, is terrible, is desolating. The great lords of the court tremble on their benches, surrounded by guards, and clad in purple and ermine, whilst, like a minister of divine wrath, he denounces against them the vengeance of Heaven, and the curses of posterity. The spies of the government have been known to faint under his examination, alleging that they were unable to bear the fire of his eloquence, and the torture of his interrogatories.

He is small of stature, and of a visage sallow and wan; but when he opens his lips, his personal defects vanish; his stature reaches the clouds, and he appears to be alone graceful and lovely in the creation. You are under a species of enchantment similar to what Horace alludes to in his Art of Poetry, when the skilful dramatist transports you sometimes to Thebes and sometimes to Athens. Curran is indeed a magician who enchains the imaginations of his hearers, and the spell is of such potency, that neither wisdom nor ignorance have any charm to resist it.

When he harangues in defence of the rights of mankind, the most bigoted are in love with liberty and virtue; whilst, with a master hand, he portrays the miseries of Ireland, not a dry eye is to be seen; the court is drowned in tears; corrupt juries, packed and empannelled for the special purpose of condemnation, softened and touched by his eloquence, resign to him their victim; the prison doors fly open at his

approach; the chains fall from the hands of the victims. He is the angel of mercy, whose lips, touched with fire by the Almighty, whisper hope in the dungeon of despair, and speak deliverance to the captive.

But to form a correct estimate of this wonderful man, you must consider him not merely as an orator; as a man distinguished only in a single walk or department of literature. Men in general have their fort or strong ground in which lies their peculiar excellence and strength. But this is not the case with him; in every thing he is great, in every thing equal. He is, as it were, a centre in the circle of sciences, an attractive and luminous focus, on which rays are incessantly falling from all parts of the orb; a profound mathematician; a logician, acute, subtle, and persuasive; a philosopher, elegantly speculative, and profoundly erudite; a wit, sometimes lashing vice with the wrath and indignation of Juvenal, sometimes tittering at folly with the elegant and courtly irony of Flaccus; a politician, clear-sighted, steady and incorruptible; an orator realizing and transcending the definition of Cicero.

FROM THE VIRGINIA ARGUS.

THE MONITOR.

IT has been remarked that human nature is the same in every age; that is, I presume, that the judgment and passions of men are, in all ages, to be affected equally by the same causes. Among many arguments which countenance the contrary opinion, the variation of taste on literary subjects presents itself with considerable force. But in no department of the *belles lettres* is this change more striking

than in that of oratory. Demosthenes and Cicero controlled Athens and Rome by the irresistible force of their eloquence: The passions of their hearers were in their hands, and were guided merely at their discretion. Yet, if we examine their orations, free from those prejudices which we imbibed at school, we shall find nothing in them calculated to transport, dissolve, and sweep along an audience of the present day. We will discover, indeed, the justice of the trite criticism, that Demosthenes is precise and earnest, that Cicero is copious and diffusive. But we shall be struck with the difference between the character of their orations, and that of our modern orations which have been most highly celebrated. Curran and Erskine are, at the present day, what Cicero and Demosthenes were to the ancient world—the models of eloquence. Yet compare the most applauded harangues of the Grecian and Roman orators, with the defences of Stockdale and of Rowan; and you will scarcely be able to persuade yourself that the fame of these men was built on the approbation of a race of beings whose judgment and passions were uniform throughout every age. Demosthenes is said to have rejected with disdain every species of ornament. Cicero is pronounced to have been florid: yet it will be found, on inspection, that there is scarcely an instance in any of his orations of an extended figure. His words are metaphorical; but he presents to the fancy no image in all the beautiful attitudes of which it may be susceptible. This was not the taste of Rome. Even in the time of Pliny the younger, when the city had advanced in refinements and in luxuries, such remained the austerity of the popular taste on literary subjects, that this orator thought it necessary to defend the boldness of a figure, which, at this day, would scarcely make an impression in common conversation.

Such, however, is not the taste of the present day. We demand the animation of tropes and figures. Such too is the taste of untutored nature. Ossian, who wrote only from the force of native genius, warmed by the rude magnificence

of the scenery around him, is all alive with the boldest metaphor. Such has always been the oriental style. Such, at this day, is the style of the Indian orator.

Curran and Erskine are remarkable instances of the success of this style. We think, however, that there is a strong distinction between the characters of their minds. Curran appears to have more fancy; Erskine more judgment. Curran awakens all our passions; Erskine gives conviction to the understanding. When we read the defence of Rowan, we tremble with expectation, we glow with resentment, we shudder with horror, we melt with pity, or are wafted to the seventh Heaven on the wings of admiration. While we read the defence of Stockdale,* our judgment yields at every step; every paragraph is a strong, an indissoluble link in the chain of conviction; and when the argument closes we pronounce, almost involuntarily, "not guilty." Not that Erskine is destitute of imagination and pathos. He possesses a very high portion of both, and the exertion is always successful. His description of the trial of Warren Hastings, before the British parliament—the crowded brilliant gallery—the masterly exertions of the speakers—the death-like silence and intense sympathy of the audience, form a picture so lively, so strongly drawn, that the whole scene passes immediately before us, and we feel all the agitation of an original spectator. When he speaks of the rigours practised by Hastings in Bengal, and introduces the Indian prince remonstrating against "the lawless foot of British depredation," he gives an example of that species of the sublime, arising from sentiment, which is unsurpassed. But Erskine seems generally more anxious to carry his point than to encircle his argument with a blaze of glory. Judgment is the ruling faculty of his mind. Curran, on the contrary, luxuriates in all the richness of fancy, and his argument is often lost amid the efful-

* It would appear, that this writer had not seen some of Mr. Erskine's most celebrated speeches, viz. on the trials of the Dean of St. Asaph, Lord George Gordon, Hardy & Co. &c.

gence of his genius. In a word, Erskine is more the logician and man of business. Curran is more the orator and the poet.

Passing to our own country—is it not astonishing that in a republic, the genial element of oratory, we have not a single example of the higher order of eloquence? In Virginia, we have several logicians, but not an orator. Yet the people, having before them no superior instance, have been pleased to bind the laurel around the brow of—let us suppose a character, and call him Sulpitius. Sulpitius is neither a logician nor an orator. He wants that clear and vigorous penetration which is necessary to distinguish the strong points of a subject, and to arrange them to advantage. Hence that heterogeneous chaos, that prolixity and confusion, which characterize all the offspring of Sulpitius's brain, and which leave the hearer without one strong impression. As an orator he is equally unfortunate. His imagination is jejune in the extreme. Take any one splendid paragraph from the speeches of Curran or Erskine, mark in them the genuine effusion of creative genius! Mark how the figures rise spontaneously from the subject! Observe how they are embellished with all the ornament of unlaboured thought and language, and with what swelling energy they are supported throughout! Compare with these the issue of Sulpitius's mind. The watery, sickly figure just makes its appearance in order to show that it has no business there; and being deserted in the moment of its birth, it sinks and dies in its own weakness; while the impotent genius of Sulpitius, unnerved by the effort, drops, in all the majesty of bathos, into a style, not merely plain, but feeble, cold, and languid; a few moments recruit his imagination, and he travails with some new figure, which, like its predecessor, is doomed to be strangled or forsaken at its birth. A tissue of abortions like these, constitute Sulpitius's title to the name of an orator. Let me warn the youthful candidate for oratorical glory, to beware of considering Sulpitius as having attained the summit of oratory, and of adopting him as his model. In spite

of the popular prejudice in his favour, he has not even the mechanical qualities of an orator. His person is good, and his gesture is easy ; but his attitudes are frequently awkward, and his delivery often interrupted. Fluency is not his property. You are forced constantly to perceive that he is hunting musical words—and, being some times thrown out in the chase, he manifests his embarrassment by stammering and rolling his eyes with perplexity to the ceiling.

I have been led to this analysis of the character of the supposed Sulpitius, for the benefit of such of our youth as aim at the character of eloquence. It is my wish to show them, that if they desire to excel, they must look to something beyond the achievements of this speaker. Let them study the defences of Curran and Erskine—let them endeavour to catch their spirit. When they shall have done this, the citizens of America will hear, applaud, and imitate.

* * It is not correct to blame Virginia for want of orators of the higher class, whilst we recollect the brilliant talents of PATRICK HENRY. But even at present, in all our courts, we find a number of very respectable speakers ; and, in congress, Virginian eloquence generally conducts the vanguard. Some of her speakers in that body, have borne the same share in the opinion of the republic, which the tenth legion bore in the confidence of Julius Cæsar. Our country is young ; but it has done wonders in its time ; and if it can preserve its republican forms, there is no doubt, in due time, it will emulate, if not surpass, whatever we have heard of Greek or Roman oratory.

THE TRIAL

OF ARCHIBALD HAMILTON ROWAN. ESQ. FOR THE PUBLICATION OF A LIBEL.

IN the latter end of December, 1792, Mr. Rowan was arrested by virtue of Mr. Justice Downes's warrant, on a charge of distributing a seditious paper. Mr. Downes having assured Mr. Rowan, that the examinations, upon which the warrant was grounded, would be returned to the clerk of the crown, and that they would, he supposed, be in course by him laid before the next term grand jury, Mr. Rowan, instead of going to gaol, in pursuance of his own opinion, followed the advice of his law friends, and gave bail for his appearance in the king's bench, to answer such charges as should be there made against him. During the succeeding Hilary term, Mr. Rowan daily attended in the king's bench, and on the last day of that term finding that no examinations had been laid before the grand jury, against him, he applied, by counsel, to the court, that the examinations should be forthwith returned, particularly, as Mr. Attorney-General had, in the course of the term, filed two informations, *ex officio*, against him, the one for the same alleged offence of distributing a seditious paper, and the other for a seditious conspiracy; whereupon Mr. Justice Downes, who was on the bench, having asserted that he had on the first day of the term, returned the examinations to the clerk of the crown, and the clerk of the crown having said, that from the multiplicity of the examinations returned to him on the first day of the term, and even on that day, he had not time to look them

over, the court refused to make any order. Mr. Rowan daily attended the king's bench on the following Easter term, until the same was nearly spent, and finding that no bills were sent up to the grand jury against him, he moved the court, by counsel, that the recognisance entered into by him and his bail should be vacated, and publicly declared, that if this motion was not granted, he would surrender himself in discharge of his bail. The Attorney-General consenting, the motion was granted, and the recognisance was vacated.

In the above-mentioned Easter term, a motion was made, on behalf of Mr. Rowan, to fix certain days for trial of the informations filed *ex officio* against him, and the Attorney-General having agreed to the appointment of two days in the ensuing Trinity term, viz. the 3d and 7th days of May, those days were accordingly appointed for the purpose. However, in the Easter vacation, the Attorney-General served a notice on Mr. Rowan, stating, that he would not proceed to trial on those days, but he would apply to the court to appoint other days, grounded on an affidavit to be filed, of which notice would be given; nothing was done upon this notice, and no affidavit was filed, or motion made thereon, and the *venire*, the process necessary for empannelling juries on the days appointed, having been, after being issued, kept by Mr. Kemmis, the crown solicitor, instead of being delivered to the sheriff, a motion was made on behalf of Mr. Rowan, in the last Trinity term, that the *venire* should be delivered to the proper officer, in order that the trials might be had on the days appointed, in case the court should not grant any motion the Attorney-General might make for postponing the trials. This motion was opposed by the Attorney-General; he declared, that there was error in the information for distributing a seditious paper. Mr. Rowan offered to agree to an immediate amendment of the information, or that a fresh one should be filed and pleaded to *instantly*, or that he would release all errors; all these offers were severally refused. The object

of the Attorney-General appeared to be to postpone the trials, and though only one of the informations was stated to be informal, yet the day appointed for the trial of the other, which was supposed to be formal, passed away without trial, equally with the day appointed for the one which was stated to be informal. The Attorney-General afterwards withdrew the information stated to have been informal, and filed another in the stead thereof. Many of Mr. Rowan's friends suspected, that the motive for postponing the trials was the expectation of having, under the shrievalty of Mr. Giffard, juries more favourable to government prosecutions, than they could entertain any hopes of having during the shrievalty of Mr. Hutton.* In Michaelmas term last, the Attorney-General applied to the court, that a day should be appointed for the trial of the information for distributing a seditious paper; the court would not appoint a day in that term, but appointed a day for the trial of that information in Hilary term following.

The following information was filed by his majesty's attorney-general, *ex officio*, against Arch. H. Rowan, Esq. viz.

KING'S BENCH.

Of Trinity term, in the 33d year of the reign of our sovereign lord George the third, now king of Great Britain, &c. in the year of our Lord 1793.

<p><i>County of the City of Dublin,</i></p>	}	<p>BE IT REMEMBERED, That the</p>
<p><i>to wit:</i></p>	}	<p>Right Hon. Arthur Wolfe, attorney-general of our present sovereign lord the king, who for our said lord the king prosecutes in this behalf, in his proper person comes into the court of our said lord the king, before the king himself, at the city of Dublin, in the county of the said city, on the 8th day of June in the same term,</p>

* There were strong grounds for this suspicion. Mr. G. was a captain of militia, had a lucrative office in the custom-house, and was then *conductor* of a *government newspaper*. The whole producing not less than 2,000*l.* a year!

and for our said lord the king gives the court here to understand and be informed, that Archibald Hamilton Rowan, of the city of Dublin, Esq. being a person of a wicked and turbulent disposition, and maliciously designing and intending to excite and diffuse among the subjects of this realm of Ireland, discontents, jealousies, and suspicions of our said lord the king, and his government, and disaffection and disloyalty to the person and government of our said lord the king, and to raise very dangerous seditions and tumults within this kingdom of Ireland; and to draw the government of this kingdom into great scandal, infamy and disgrace; and to incite the subjects of our said lord the king to attempt, by force and violence, and with arms, to make alterations in the government, state, and constitution of this kingdom, and to incite his majesty's said subjects to tumult and anarchy, and to intimidate and overturn the legislature of this kingdom, by an armed force, on the 16th day of December, in the 33d year of our said present sovereign lord George the third by the grace of God of Great Britain, France, and Ireland, king, defender of the faith, and so forth, with force and arms, at Dublin aforesaid, to wit, in the parish and ward of St. Michael the Archangel, and in the county of the said city, wickedly, maliciously, and seditiously, did publish, and cause and procure to be published, a certain false, wicked, malicious, scandalous, and seditious libel, of and concerning the government, state, and constitution of this kingdom, according to the tenor and effect following, that is to say:

THE SOCIETY OF UNITED IRISHMEN, DUBLIN, TO THE
VOLUNTEERS OF IRELAND.

WM. DRENNAN, *Chairman*.—ARCH. H. ROWAN, *Secretary*.

"*Citizen Soldiers!*"

"YOU first took up arms to protect your country from foreign enemies, and from domestic disturbance; for the same purposes it now becomes necessary that you should re-

sume them. A proclamation has been issued in England for embodying the militia; and a proclamation has been issued by the lord lieutenant in Ireland [meaning a proclamation which issued under the great seal of the kingdom of Ireland the 8th day of December, 1792] for repressing all seditious associations. In consequence of both these proclamations, it is reasonable to apprehend danger from abroad, and danger at home; for whence but from apprehended danger are these menacing preparations for war drawn through the streets of this capital, [meaning the city of Dublin,] or whence, if not to create that internal commotion which was not found, to shake that credit which was not affected, to blast that volunteer honour which was hitherto inviolate, are those terrible suggestions, and rumours, and whispers, that meet us at every corner, and agitate at least our old men, our women and children! Whatever be the motive, or from whatever quarter it arises, alarm has arisen; and you, volunteers of Ireland, are therefore summoned to arms at the instance of government, as well as by the responsibility attached to your character, and the permanent obligations of your institution. We will not at this day condescend to quote authorities for the right of having and of using arms, but we will cry aloud even amid the storm raised by the witchcraft of a proclamation, that to your formation was owing the peace and protection of this island, to your relaxation has been owing its relapse into impotence and insignificance, to your renovation must be owing its future freedom and its present tranquillity; you are therefore summoned to arms, in order to preserve your country in that guarded quiet which may secure it from external hostility, and to maintain that internal regimen throughout the land, which, superseding a notorious police, or a suspected militia, may preserve the blessings of peace by a vigilant preparation for war. Citizen soldiers, to arms, take up the shield of Freedom and the pledges of peace—peace, the motive and end of your virtuous institution. War, an occasional duty, ought never to be made an occupation. Every

man should become a soldier in defence of his rights; no man ought to continue a soldier for offending the rights of others. The sacrifice of life in the service of our country is a duty much too honourable to be intrusted to mercenaries; and at this time, when your country has, by public authority, been declared in danger, we conjure you by your interest, your duty, and your glory, to stand to your arms, and in spite of a police, in spite of a fencible militia, in virtue of two proclamations, to maintain good order in your vicinage, and tranquillity in Ireland. It is only by the military array of men in whom they confide, whom they have been accustomed to revere as the guardians of domestic peace, the protectors of their liberties and lives, that the present agitation of the people can be stilled, that tumult and licentiousness can be repressed, obedience secured to existing law, and a calm confidence diffused through the public mind in the speedy resurrection of a *free* constitution, [meaning that the people of Ireland had not at the time of the publishing aforesaid, a free constitution,] of liberty and equality, words which we use for an opportunity of repelling calumny, saying, that by liberty we never understood unlimited freedom, nor by equality the levelling of property, or the destruction of subordination: this is a calumny invented by that faction, or that gang, which misrepresents the king to the people, and the people to the king, traduces one half of the nation to cajole the other, and, by keeping up distrust and division, wishes to continue the proud arbitrators of the fortune and fate of Ireland. Liberty is the exercise of all our rights, natural and political, secured to us and our posterity by a *real* representation of the people; and equality is the extension of the constituent to the fullest dimensions of the constitution, of the elective franchise to the whole body of the people, to the end that government, which is collective power, may be guided by collective will, and that legislation may originate from public reason to keep pace with public improvement, and terminate in public happiness. If our constitution be imper-

fect, nothing but a reform in the representation will rectify its abuses ; if it be perfect, nothing but the same reform can perpetuate its blessings. We now address you as citizens, for to be citizens you became soldiers ; nor can we help wishing, that all soldiers, partaking the passions and interests of the people, would remember that they were once citizens, *that seduction made them soldiers, but nature made them men.* We address you without any authority, save that of reason ; and if we obtain the coincidence of public opinion, it is neither by force nor stratagem, for we have no power to terrify, no artifice to cajole, no fund to seduce. Here we sit without mace or beadle, neither a mystery, nor a craft, nor a corporation. In four words lies all our power : **UNIVERSAL EMANCIPATION** and **REPRESENTATIVE LEGISLATION.** Yet we are confident, that on the pivot of this principle, a convention, still less, a society, and still less, a man, will be able first to move and then to raise the world. We therefore wish for *catholic emancipation* without any modification ; but still we consider this enfranchisement as merely the portal to the *temple of freedom* ; wide as this entrance is, wide enough to admit 3,000,000 of people, it is narrow when compared to the capacity and comprehension of our beloved principle, which takes in every individual of the Irish nation, casts an equal eye over the whole island, embraces all that think, and feels for all that suffer. The catholic cause is subordinate to our cause, and included in it ; for as united Irishmen we adhere to no sect, but to society—to no cause but christianity—to no party but the whole people. In the sincerity of our souls do we desire catholic emancipation : but, were it obtained to-morrow, to-morrow would we go on as we do to-day, in the pursuit of that reform which would soon be wanting to ratify their liberties as well as our own. For both these purposes it appears necessary, that provincial conventions should assemble preparatory to the convention of the protestant people ; the delegates of the catholic body are not justified in communicating with individuals, or even bodies of an inferior authority, and

therefore an assembly of a similar nature and organization is necessary to establish an intercourse of sentiments, a uniformity of conduct, a united cause, and a united nation; if a convention on the one part does not soon follow, and is not soon connected with that on the other, the common cause will split into partial interests, the people will relapse into inattention and inertness, the union of affection and exertion will dissolve, and too probably some local insurrections, instigated by the malignity of our common enemy, may commit the character and risk the tranquillity of the island, which can be obviated only by an assembly arising from, assimilated with, the people, and whose spirit may be, as it were, knit with the soul of the nation; unless the sense of the protestant people be on their part as fairly collected and as judiciously directed, unless individual exertion consolidates into collective strength, unless the particles unite into one mass, we may perhaps serve some person or some party for a little, but the public not at all. The nation is neither insolent, nor rebellious, nor seditious; while it knows its rights, it is unwilling to manifest its powers; it would rather supplicate administration to anticipate revolution, by well-timed reform, and to save their country in mercy to themselves. The 15th of February approaches, a day ever memorable in the annals of this country as the birthday of *new Ireland*;^{*} let parochial meetings be held as soon as possible, let each parish return delegates, let the sense of Ulster be again declared from Dungannon on a day auspicious to union, peace and freedom, and the spirit of the north will again become the spirit of the nation. The civil assembly ought to claim the attendance of the military associations, and we have addressed you, citizen soldiers, on the subject, from the belief that your body, uniting conviction with zeal, and zeal with activity, may have much influence over your countrymen, your relations, and friends. We offer only a general outline to the public, and meaning to address Ireland, presume not, at present, to fill up the plan, or preoccupy the mode of its

^{*} For an account of the first Dungannon meeting, see Historical Sketch

execution. We have thought it our duty to speak—answer us by actions; you have taken time for consideration; fourteen long years have elapsed since the rise of our associations; and, in 1782, did you imagine that in 1792 this nation would still remain unrepresented? How many nations in this interval have gotten the start of Ireland? How many of your countrymen have sunk into the grave!”

In contempt of our said lord the king, in open violation of the laws of this kingdom, to the evil and pernicious example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. Whereupon the said Attorney-General of our said lord the king, in this behalf prosecutes, and prays the consideration of the court here in the premises, that due process of law may be awarded against him the said Archibald Hamilton Rowan in this behalf, to make him answer to our said lord the king, touching and concerning the premises aforesaid.

ARTHUR WOLFE.

Thos. Kemmis, attorney.

To this information, Mr. Rowan appeared by Matt. Dowling, gent. his attorney, and pleaded the general issue, not guilty. And the court having appointed Wednesday, the 29th day of January, 1794, for the trial of the said issue, the court then met accordingly; and the jury being empannelled and sworn, the cause was opened by

The Attorney-General.—The traverser in this case, gentlemen, stands accused upon an information filed *ex officio*, by the king's attorney-general, for publishing a seditious libel. It is my duty to lay the facts of this case before you; it will be the duty of another of his majesty's servants to observe upon the evidence. I shall state the nature of the charge, and the questions you are to try: I will then state such circumstances as are necessary to be taken into your consideration, for the purpose of understanding and expounding that paper which the information charges to be a malicious and seditious

libel. The information charges that Archibald H. Rowan, maliciously designing and intending to excite and diffuse among the subjects of this realm, discontents, disaffection, and disloyalty to the king and government, and to raise very dangerous seditions and tumults, and to draw the government into scandal, infamy, and disgrace, and to incite the subjects to attempt, by force and with arms, to make alterations in the government, and to excite the subjects to anarchy, to overturn the constitution, and overawe the legislature of the kingdom, did publish the libel set forth in the information.

I shall call your attention to the history of the times about which this libel was published. From the time of the restoration of our constitution—from the year 1784 to the year 1792—this country advanced in prosperity with a regular progress and gradation. The agriculture, commerce, and police improved; the civilization of the country proceeding uniformly from year to year; the commonalty had begun to enjoy blessings they had been strangers to—ships crowded in our harbours—commerce occupied our ports—culture in our fields, and peace and happiness everywhere prevailed. The French revolution took place, when there were found many men, who, from situation, from circumstances, or from ambition, were desirous of commotion. Clubs were formed in the metropolis with the avowed intention of improving the constitution, for they must assume some pretext, but with a view, I fear, under colour of that, to overturn it. They subsisted here in this town under different names, till at length, in 1791, they formed themselves into a club, called *The Society of United Irishmen*, consisting at first of a small number, composed of various classes of men, certainly some of them of the learned professions, some of the lowest members in the community. In 1791 they continued to pour upon the public daily publications, setting forth the distresses of the people, teaching them to be discontented with their situation and the government of the country.

Things thus proceeded down to the latter end of the year

1792. In the latter end of autumn, 1792, the allied armies retired from the Kingdom of France: the convention of that kingdom began to hold a high language, and to talk of over-setting the government of kings. An attack was made upon regal authority, a spirit was stirred among those desirous of such schemes—it seemed to inspire them. There was a talk of overturning the government of king, lords, and commons—success, at the same time, seemed to crown the arms of the French; they advanced beyond their own territory, and menaced an attack upon the United States of Holland. In this situation of things, there did pervade a gloomy apprehension for the safety of this country. Emissaries from France were spread throughout all Europe; a new array of a new corps was made in Dublin in the noonday, decorated with emblems of sedition: they were to parade in your streets; and to be marshalled in your squares. The volunteers of Ireland, a name revered by this country, and by every good man loving the constitution, that sacred name, was made a cloak for arming a banditti that arraigned the constitution, and degraded the name of volunteer; a national guard was formed upon the plan of those in Paris: It is notorious to every man in Ireland, to every man in the British dominions, that such men assembled with clothing of a particular uniform, with emblems of harps de-vested of the royal crown: every thing was undertaken to spread the spirit which animated themselves; and can any man forget the situation of Dublin in September, October, and November, 1792, which caused apprehensions in those who were well affected to the government and tranquillity of the country? Can any man forget the state of the nation at this period? Her credit was shaken; good people stood appalled; and those loving peace stood astonished at the languidness of government.

At length, that government came forward, which had never slept, but had been proceeding with mildness, determined not to proceed to action, nor have recourse to any severer remedies, until every man in the state, who had a moment's reflect-

tion, must see the necessity of exertion. The troops are summoned to meet, the guards are summoned to assemble, and the first battalion of national guards were to have paraded, clothed like Frenchmen. The night before, the lord lieutenant had summoned the council of the kingdom; upon that night a proclamation issued, stating, that there were intentions to assemble men in arms, with seditious signs, and apprehending danger from their assembling, it prohibited their meeting. The proclamation issued on a Sunday night, and it produced that satisfaction which all good men, desirous of order, seek to enjoy, and they felt, once more, the pleasurable assurance that they had a government. Appalled by this proclamation, the corps did not meet on the 8th of December, as it was intended, though some few were seen, dressed in the national guard uniform, parading the streets with a mob crowding at their heels; but, however, nothing followed. They were seen, and, blessed be God, they were seen no more. This proclamation having for its object the preservation of the peace of this kingdom, and the city in particular, mildly and coolly cautioning all men against those measures, held out the consequences that must necessarily follow, if they did not obey. A proclamation which received the applause of the great and good, of the lovers of society, and of every man not lost to the sense of order and the constitution; but odious to every man who was attached to the society of United Irishmen, and whose views correspond with it. While I speak of that society, let me not be understood as imputing to every man who is in it those illegal motives which I impute to the society in general; there might have been in it, no doubt, many well-meaning persons, for there were men picked up, industriously, to lend their names, in the streets, in the lanes, in the markets, in the highways, and in the fields; even the rich and industrious grazier was procured to lend his name. To the good, this proclamation gave pleasure and satisfaction; to the bad, it became odious, and detestable, and they, accordingly, formed the intention of bringing the government into disgrace for issuing that proclamation.

A few days after, I am not aware of the particular day, but a few days after the issuing of the proclamation, the society assembled; the proclamation was upon the 7th, the address I speak of was published on the 16th of December. The meeting, therefore, must have been between the 7th and the 16th of December. The society, I say, assembled, and they agreed upon a certain address to the volunteers of Ireland, and Dr. Drennan is there stated to have been in the chair, and the traverser secretary. At that meeting the address to the volunteers was agreed upon, which is the libel charged against Mr. Rowan as being guilty of publishing it. Under that address, this was to be done. The volunteers of Dublin were to be called into action, and those papers were to be dispersed among them. For that purpose, the several volunteer corps at that time existing in Dublin, were summoned to assemble in a house in Cope-street belonging to Pardon, a fencing master, upon the 16th day of December. Accordingly, upon that day, the several corps of volunteers did go with side arms to this fencing school in Cope-street. The traverser was, I believe, at the head of one of these corps; another very celebrated name was at the head of another of them: James Napper Tandy. Who was at the head of the others, I am not able to inform you. But in the afternoon of the 16th of December, several volunteers, with uniforms and side arms assembled in the fencing school, where there was a gallery, and into that gallery there was such public access, that what passed below may be said to have passed in the face of the world; to such excess had those persons carried their designs as to expose them to open view, and, if I state what is not true, there are 100 persons in the volunteer corps of the city of Dublin, out of whom a number may be called to contradict me. The corps, I say, assembled in that room. There stood in the middle of the room a table, and there was a vast number of printed papers brought in, and placed on the table. The different corps entered into several resolutions, having taken into their wise consideration the pro-

clamation issued by the lord lieutenant and council; the necessity for issuing it is investigated; each of the corps took severally into their consideration the propriety of it, and next day published their different sentiments, all expressive of disapprobation. So that, it is manifest, they were brought publicly together for a state purpose, and to debate a state matter. While these resolutions were in discussion, Mr. Tandy and Mr. Rowan were seen to take from the table the printed papers that lay upon it, and disperse them among the several volunteers who stood around them, and to hand them from the lower room to persons in the gallery, and to persons not in their confidence: they were handed up promiscuously to any man there, and to many persons in the streets, that evening and the next day; they were flung out of the windows to the mob, that stood round the room.

These, gentlemen, are the circumstances which preceded the publication of this paper by the traverser; it will be for you to consider with what view and purpose a paper like this was composed, and thus dispersed. If you believe it was a candid and fair discussion upon constitutional subjects, or grievances, real or supposed, you will not consider it as a libel; but, if from internal evidence in the paper itself, and from the circumstances attending it, you believe it was no such thing, but that it was published to raise discontents against the government—to disturb the people—to overawe the parliament, or any branch of the state, then you must find him guilty. You, gentlemen, will take the paper into your room with you; consider it coolly and discharged from all you have heard abroad respecting it, and determine in your own minds, whether it be possible to give it any other construction than that which the information has ascribed to it. I will submit to you, gentlemen—to you alone I desire to submit the cool examination of that paper itself. It is impossible with the utmost ingenuity (and he who comes after me on the other side has as much ingenuity as any man) to show that it was not written for the purpose of overawing

the legislature. [Here Mr. Attorney read the publication, as set forth in the information, and charged to be libellous, accompanied with severe remarks on each sentence.]

EVIDENCE ON THE PART OF THE CROWN.

John Lyster deposed, That on Sunday forenoon, the 16th of December, 1792, he happened to pass through Cope-street, (Dublin,) and perceiving a great crowd in the fencing school of one Pardon, he went in—he was told, that no one with coloured clothes could be there, but was shown a gallery, to which he went—thought the assembly to consist of one or two hundred persons, some of whom were dressed in the old, others in the new volunteer uniform. Among those in the room were Messrs. Rowan, Tandy, and Kenny, whom he had known before. There was a table in the room on which were a great many printed papers—a bundle of those papers was taken up by Mr. Rowan, and distributed among the persons below; some thrown up to the gallery, one of which he got, and some thrown out of the window to the mob. Mr. Rowan read a paper to the company, which, so far as he read, was similar to the one he had. Soon after this, having occasion to call on Mr. Pollock, (attorney,) he was asked by him, if he had been at the meeting in Cope-street. He answered yes, related the whole affair, and shewed the paper he had got. Mr. Kemmis (the crown solicitor) waited on him the next day, and was made acquainted with all the particulars of the meeting; since when, the deponent had obtained an ensign's commission in the army, through the interest (as he said) of his relation Lady Hobart. This deponent was witness to two bonds given by his father to his brother, the one for 500*l*. and the other for 300*l*. The bonds were put in suit; the signatures of his father were denied—he was, as a subscribing witness, sworn on the trial—the jury could not agree, and there was no verdict—the case was re-

ferred, and the arbitrators awarded only 200*l*. Deponent took the charge of one Peter Hamiltbn, a lunatic—went with him to England, and came back again. During his having the custody of the lunatic, he obtained from him a note for 150*l*.—he had brought suit on the note—after the death of the lunatic, his executors had filed a bill in chancery to be relieved from the note—he had not yet recovered the money.

Wm. Morton's testimony relative to the meeting in Copestreet, was nearly similar to that of John Lyster's, but did not prove a publication by the defendant.

EVIDENCE ON BEHALF OF THE TRAVERSER.

Francis Blake said, he could not positively say that Lyster was not to be credited on oath, but "he should hesitate, he should doubt."

John Smith knew not much of Lyster, but from what he did know, he should give very little credit to what he should say *even on oath*.

Mary Hatchell—"Lyster is not to be credited on oath."

Here the testimony closed.

A few minutes before the defendant's counsel rose, a guard of soldiers was brought into the court house by the sheriff.

Mr. CURRAN. Gentlemen of the jury. When I consider the period at which this prosecution is brought forward; when I behold the *extraordinary safeguard of soldiers resorted to*, no doubt for the preservation of peace and order; when I catch, as I cannot but do, the throb of public anxiety, which beats from one end to the other of this hall; when I reflect on what may be the fate of a man of the most beloved personal character, of one of the most respected families of our country, himself the only individual of that family, I may almost say of that country, who can look to that possible fate with unconcern. Feeling, as I do, all these impres-

tions, it is in the honest simplicity of my heart I speak, when I say, that I never rose in a court of justice with so much embarrassment as upon this occasion.*

If, gentlemen, I could entertain a hope of finding refuge for the disconcertion of my mind, in the perfect composure of yours; if I could suppose that those awful vicissitudes of human events, which have been stated or alluded to, could leave your judgments undisturbed, and your hearts at ease, I know I should form a most erroneous opinion of your character: I entertain no such chimerical hopes; I form no such unworthy opinions; I expect not that your hearts can be more at ease than my own; I have no right to expect it; but I have a right to call upon you, in the name of your country, in the name of the living God, of whose eternal justice you are now administering that portion which dwells with us on this side of the grave, to discharge your breasts, as far as you are able, of every bias of prejudice or passion, that if my client is guilty of the offence charged upon him, you may give tranquillity to the public by a firm verdict of conviction; or, if he is innocent, by as firm a verdict of acquittal; and that you will do this in defiance of the paltry artifices and senseless clamours that have been resorted to,

* Mr. Rowan is justly entitled to the character of a *gentleman*, a character often assumed, but often misunderstood. Having received a liberal education, he passed a considerable time in Paris, where he associated with the most polished circles of that celebrated capital; and he afterwards served several years as an officer in the British army: To an ample fortune, a commanding figure, a marking countenance, and elegant accomplishments, were added a courage and generosity that would have distinguished him even in the times of chivalry. Soon after his return to his native country, he rescued an innocent young woman from the snares of that hoary lecher Lord —. This generous action, which was accompanied with some personal risk, brought Mr. Rowan into public notice and deserved popularity—but he soon found, that relieving distressed damsels was not the way to recommend himself to the favour of the rulers of the nation—his exertions in another cause were unsuccessful; and his fair fortunes, and well-founded expectations, were shipwrecked in the tempestuous and destructive ocean of Irish politics.

in order to bring him to his trial with anticipated conviction. And, gentlemen, I feel an additional necessity of thus conjuring you to be upon your guard, from the able and imposing statement which you have just heard on the part of the prosecution. I know well the virtues and talents of the excellent person who conducts the prosecution; I know how much he would disdain to impose upon you by the trappings of office; but I also know how easily we mistake the lodgment which character and eloquence can make upon our feelings, for those impressions that reason, and fact, and proof, only ought to work upon our understandings.

Perhaps, gentlemen, I shall act not unwisely in waving any further observation of this sort, and giving your minds an opportunity of growing cool and resuming themselves, by coming to a calm and uncoloured statement of mere facts, premising only to you, that I have it in the strictest injunction from my client, to defend him upon facts and evidence only, and to avail myself of no technical artifice or subtilty that could withdraw his cause from the test of that inquiry, which it is your province to exercise, and to which only he wishes to be indebted for an acquittal.

In the month of December, 1792, Mr. Rowan was arrested on an information, charging him with the offence for which he is now on his trial. He was taken before an honourable personage now on that bench, and admitted to bail.

He remained a considerable time in this city, soliciting the threatened prosecution, and offering himself to a fair trial by a jury of his country; but it was not then thought fit to yield to that solicitation; nor has it now been thought proper to prosecute him in the ordinary way, by sending up a bill of indictment to a grand jury. I do not mean by this to say, that informations *ex officio* are always oppressive or unjust; but I cannot but observe to you, that when a petty jury is called upon to try a charge not previously found by the grand inquest, and supported by the naked assertion only of the king's prosecutor, that the accusation labours under a weakness of

probability which it is difficult to assist. If the charge had no cause of dreading the light—if it was likely to find the sanction of a grand jury, it is not easy to account why it deserted the more usual, the more popular, and the more constitutional mode, and preferred to come forward in the ungracious form of *ex officio* information.

If such bill had been sent up and found, Mr. Rowan would have been tried at the next commission; but a speedy trial was not the wish of his prosecutors. An information was filed, and when he expected to be tried upon it, an error, it seems, was discovered in the record. Mr. Rowan offered to wave it, or consent to any amendment desired. No—that proposal could not be accepted—a trial must be followed. That information, therefore, was withdrawn, and a new one filed; that is, in fact, a third prosecution was instituted upon the same charge. This last was filed on the 8th day of last July. Gentlemen, these facts cannot fail of a due impression upon you. You will find a material part of your inquiry must be, whether Mr. Rowan is pursued as a criminal, or hunted down as a victim. It is not, therefore, by insinuation or circuitry, but it is boldly and directly that I assert, that oppression has been intended and practised upon him, and by those facts which I have stated I am warranted in the assertion.

His demand, his entreaty to be tried was refused, and why? a hue and cry was to be raised against him; the sword was to be suspended over his head; some time was necessary for the public mind to become heated, by the circulation of artful clamours of anarchy and rebellion—those same clamours, which, with more probability, and not more success, had been circulated before through England and Scotland. In this country, the causes and the swiftness of their progress were as obvious as their folly has since become to every man of the smallest observation. I have been stopped myself with, "Good God, Sir, have you heard the news? No, Sir; what? Why, a French emissary was seen travelling through Connaught in a post-chaise, and scattering from the windows, as

he passed, little doses of political poison, made up in square bits of paper—another was actually surprised in the fact of seducing our good people from their allegiance, by discourses upon the indivisibility of French robbery and massacre, which he preached in the French language to a congregation of Irish peasants.”

Such are the bugbears and spectres to be raised to warrant the sacrifice of whatever little public spirit may remain amongst us ; but time has also detected the imposture of these Cock-lane apparitions, and you cannot now, with your eyes open, give a verdict without asking your consciences this question : Is this a fair and honest prosecution ? Is it brought forward with the single view of vindicating public justice, and promoting public good ? And here let me remind you, that you are not convened to try the guilt of a libel, affecting the personal character of any private man : I know no case in which a jury ought to be more severe than when personal calumny is conveyed through a vehicle which ought to be consecrated to public information ; neither, on the other hand, can I conceive any case in which the firmness and the caution of a jury should be more exerted than when a subject is prosecuted for a libel on the state. The peculiarity of the British constitution, (to which, in its fullest extent, we have an unbounded right, however distant we may be from the actual enjoyment,) and in which it surpasses every known government in Europe, is this ; that its only professed object is the general good, and its only foundation the general will ; hence the people have a right, acknowledged from time immemorial, fortified by a pile of statutes, and authenticated by a revolution that speaks louder than them all, to see whether abuses have been committed, and whether their properties and their liberties have been attended to as they ought to be. This is a kind of subject which I feel myself overawed when I approach. There are certain fundamental principles which nothing but necessity should expose to a public examination ; they are pillars, the depth of whose foundation you cannot

explore without endangering their strength—but let it be recollected, that the discussion of such topics should not be condemned in me, nor visited upon my client. The blame, if any there be, should rest only with those who have forced them into discussion. I say, therefore, it is the right of the people to keep an eternal watch upon the conduct of their rulers; and in order to that, the freedom of the press has been cherished by the law of England. In private defamation, let it never be tolerated; in wicked and wanton aspersions upon a good and honest administration, let it never be supported; not that a good government can be exposed to danger by groundless accusation, but because a bad government is sure to find, in the detected falsehood of a licentious press, a security and a credit which it could never otherwise obtain.

I have said that a good government cannot be endangered—I say so again: for whether it be good or bad, can never depend upon assertion; the question is decided by simple inspection—to try the tree, look at its fruit; to judge of the government, look at the people. What is the fruit of good government? “The virtue and happiness of the people.” Do 4,000,000 of people in this country gather those fruits from that government, to whose injured purity, to whose spotless virtue and violated honour, this seditious and atrocious libeller is to be immolated upon the altar of the constitution? To you, gentlemen of that jury who are bound by the most sacred obligation to your country and your God to speak nothing but the truth, I put the question—do they gather these fruits? Are they orderly, industrious, religious, and contented? Do you find them free from bigotry and ignorance, those inseparable concomitants of systematic oppression; or, to try them by a test as unerring as any of the former, are they united? The period has now elapsed in which considerations of this extent would have been deemed improper to a jury. Happily for these countries, the legislature of each has lately changed, or, perhaps, to speak more properly, revi-

ved and restored the law respecting trials of this kind.* For the space of thirty or forty years, a usage had prevailed in Westminster-Hall, by which the judges assumed to themselves the decision of the question, Whether libel or not? But the learned counsel for the prosecution are now obliged to admit, that this is a question for the jury only to decide. You will naturally listen with respect to the opinion of the court, but you will receive it as matter of advice, not as matter of law; and you will give it credit, not from any adventitious circumstances of authority, but merely so far as it meets the concurrence of your own understandings.

Give me leave now to state to you the charge, as it stands upon the record: It is, that Mr. Rowan "being a person of a wicked and turbulent disposition, and maliciously designing and intending to excite and diffuse amongst the subjects of this realm of Ireland, discontents, jealousies and suspicions of our lord the king and his government, and disaffection and disloyalty to the person and government of our said lord the king, and to raise very dangerous seditions and tumults within his kingdom of Ireland, and to draw the government of this kingdom into great scandal, infamy and disgrace, and to incite the subjects of our said lord the king to attempt, by force and violence, and with arms, to make alterations in the government, state, and constitution of this kingdom, and to incite his majesty's said subjects to tumult and anarchy, and to overturn the established constitution of this kingdom, and to overawe and intimidate the legislature of this kingdom by armed force," did "maliciously and seditiously," publish the paper in question.

Gentlemen, without any observation of mine, you must see that this information contains a direct charge upon Mr. Rowan; namely, that he did, with the intents set forth in the information, publish this paper, so that here you have, in fact, two or three questions for your decision: first, the matter of fact of the publication; namely, did Mr. Rowan publish that paper? If Mr. Rowan did not, in fact, publish that paper,

* Alluding to Mr. Fox's Jury Bill.

you have no longer any question on which to employ your minds. If you think that he was, in fact, the publisher, then, and not till then, arises the great and important subject to which your judgments must be directed. And that comes shortly and simply to this, is the paper a libel; and did he publish it with the intent charged in the information? But whatever you may think of the abstract question, whether the paper be libellous or not, and of which paper it has not even been insinuated that he is the author, there can be no ground for a verdict against him, unless you also are persuaded that what he did was done with a criminal design. I wish, gentlemen, to simplify, and not to perplex; I therefore say again, if these three circumstances conspire, that he published it, that it was a libel, and that it was published with the purposes alleged in the information; you ought, unquestionably, to find him guilty; if, on the other hand, you do not find that all these circumstances concurred; if you cannot, upon your oaths, say that he published it; if it be not in your opinion a libel, and if he did not publish it with the intention alleged; I say, upon the failure of any one of these points, my client is entitled, in justice, and upon your oaths, to a verdict of acquittal.

Gentlemen, Mr. Attorney-General has thought proper to direct your attention to the state and circumstances of public affairs at the time of this transaction; let me also make a few retrospective observations on a period at which he has but slightly glanced; I speak of the events that took place before the close of the American war. You know, gentlemen, that France had espoused the cause of America, and we became thereby engaged in war with that nation. *Hec nescia mens hominum futuri!* Little did that ill-fated monarch know that he was forming the first causes of those disastrous events, that were to end in the subversion of his throne, in the slaughter of his family, and the deluging of his country with the blood of his people. You cannot but remember, that at a time when we had scarcely a regular

soldier for our defence; when the old and the young were alarmed and terrified with the apprehensions of invasion, that Providence seemed to have worked a sort of miracle in our favour. You saw a band of armed men come forth at the great call of nature, of honour, and their country. You saw men of the greatest wealth and rank; you saw every class of the community give up its members, and send them armed into the field, to protect the public and private tranquillity of Ireland. It is impossible for any man to turn back to that period, without reviving those sentiments of tenderness and gratitude which then beat in the public bosom; to recollect, amidst what applause, what tears, what prayers, what benedictions, they walked forth amongst spectators, agitated by the mingled sensations of terror and reliance, of danger and protection, imploring the blessings of heaven upon their heads; and its conquest upon their swords. That illustrious, and adored, and *abused* body of men, stood forward, and assumed the title, which, I trust, the ingratitude of their country will never blot from its history, "THE VOLUNTEERS OF IRELAND." Give me leave, now, with great respect, to put one question to you: Do you think the assembling of that glorious band of patriots was an insurrection? Do you think the invitation to that assembling would have been sedition? They came under no commission but the call of their country; unauthorized and unsanctioned, except by public emergency and public danger. I ask, was that meeting an insurrection, or not? I put another question: If any man had then published a call on that body, and stated, that war was declared against the state—that the regular troops were withdrawn—that our coasts were hovered round by the ships of the enemy—that the moment was approaching when the unprotected feebleness of age and sex, when the sanctity of habitation would be disregarded and profaned by the brutal ferocity of a rude invader; if any had then said to them, "Leave your industry for a while; that you may return to it again, and come forth in arms for the public defence." I put this question to you

boldly, gentlemen. It is not the case of the volunteers of that day; it is the case of my client, at this hour, which I put to you. Would that call have been then pronounced in a court of justice, or by a jury on their oaths, a criminal and seditious invitation to insurrection? If it would not have been so then, upon what principle can it be so now? What is the force and perfection of the law! It is the permanency of the law; it is, that whenever the fact is the same, the law is also the same; that the law remains a written, monumented and recorded letter, to pronounce the same decision upon the same facts, whenever they shall arise. I will not affect to conceal it; you know there has been an artful, ungrateful and blasphemous clamour raised against these illustrious characters, the saviours of the kingdom of Ireland. Having mentioned this, let me read a few words of the paper alleged to be criminal: "You first took up arms to protect your country from foreign enemies and from domestic disturbance. For the very same purposes, it now becomes necessary that you should resume them."

I should be the last in the world to impute any want of candour to the right honourable gentleman who has stated the case on behalf of the prosecution; but he has certainly fallen into a mistake, which, if not explained, might be highly injurious to my client. He supposed that this publication was not addressed to the old volunteers, but to new combinations of them, formed upon new principles, and actuated by different motives. You have the words to which this construction is imputed upon the record; the meaning of his mind can be collected only from those words which he has made use of to convey it. The guilt imputable to him can only be inferred from the meaning ascribable to those words. Let his meaning then be fairly collected by resorting to them. Is there a foundation to suppose that this address was directed to any such body of men as has been called a *banditti*, with what justice it is unnecessary to inquire, and not to the old volunteers? As to the sneer at the word *citizen*

soldiers, I should feel that I was treating a very respected friend with an insidious and unmerited unkindness, if I affected to expose it by any gravity of refutation: I may, however, be permitted to observe, that those who are supposed to have disgraced this expression by adopting it, have taken it from the idea of the British constitution "that no man in becoming a soldier, ceases to be a citizen."* Would to God, all enemies as they are, that that unfortunate people had borrowed more from that sacred source of liberty and virtue; and would to God, for the sake of humanity, that they had preserved even the little they did borrow. If even there could be an objection to that appellation, it must have been strongest when it was first assumed. To that period the writer manifestly alludes; he addresses those who first took up arms; "you first took up arms to protect your country from foreign enemies, and from domestic disturbance. For the same purpose, it is now necessary that you should resume them." Is this applicable to those who had never taken up arms before? "A proclamation," says this paper, "has been issued in England, for embodying the militia, and a proclamation has been issued by the lord lieutenant and council in Ireland, for repressing all seditious associations. In consequence of both these proclamations, it is reasonable to apprehend danger from abroad, and danger at home." God help us; from the situation of Europe at that time, we were threatened with too probable danger from abroad, and I am afraid it was not without foundation that we were told our having something to dread at home. I find much abuse has been lavished on the disrespect with which the proclamation is treated, in that part of the paper alleged to be a libel. To that my answer for my client is short; I

* The volunteers, prior to 1783, used the term "citizen soldiers," agreeably to the good old whiggish principle of the English constitution, viz. that men in becoming soldiers, do not cease to be citizens. See General Washington's never-to-be-forgotten farewell address, and other American publications.

do conceive it competent to a British subject—if he think that a proclamation has issued for the purpose of raising false terrors, I hold it to be not only the privilege, but the duty of a citizen to set his countrymen right, with respect to such misrepresented danger; and until a proclamation, in this country, shall have the force of law, the reason and grounds of it are surely at least questionable by the people. Nay, I will go farther; if an actual law had received the sanction of the three estates, if it be exceptionable in any matter, it is warrantable to any man in the community to state, in a becoming manner, his ideas upon it. And I should be at a loss to know if the positive laws of Great Britain are thus questionable, upon what ground the proclamation of an Irish government should not be open to the animadversion of an Irish subject.

Whatever be the motive, or from whatever quarter it arises, says this paper, "alarm has arisen." Gentlemen, do you not know that to be the fact? It has been stated by the Attorney-General, and most truly, that the most gloomy apprehensions were entertained by the whole country. "You, volunteers of Ireland, are, therefore, summoned to arms at the instance of government, as well as by the responsibility attached to your character, and the permanent obligations of your institution." I am free to confess, if any man assuming the liberty of a British subject to question public topics, should, under the mask of that privilege, publish a proclamation inviting the profligate and seditious, those in want and those in despair, to rise up in arms to overawe the legislature, to rob us of whatever portion of the blessings of a free government we possess; I know of no offence involving greater enormity. But that, gentlemen, is the question you are to try. If my client acted with an honest mind and fair intention, and having, as he believed, the authority of government to support him in the idea that danger was to be apprehended, did apply to that body of so known and so revered a character, calling upon them by their former honour, the principle of their glorious institution, and the great stake

they possessed in their country. If he interposed not upon a fictitious pretext, but a real belief of actual and imminent danger, and that their arming at that critical moment was necessary to their country, his intention was not only innocent, but highly meritorious. It is a question, gentlemen, upon which you only can decide; it is for you to say, whether it was criminal in the defendant to be so misled, and whether he is to fall a sacrifice to the prosecution of that government by which he was so deceived. I say again, gentlemen, you can look only to his own words as the interpreter of his meaning, and to the state and circumstances of his country, as he was made to believe them, as the clew to his intention. The case then, gentlemen, is shortly and simply this: a man of the first family, and fortune, and character, and property among you, reads a proclamation stating the country to be in danger from abroad and at home, and thus alarmed—thus upon authority of the prosecutor, alarmed, applies to that august body before whose awful presence sedition must vanish, and insurrection disappear. You must surrender, I hesitate not to say it, your oaths to unfounded assertion, if you can submit to say, that such an act, of such a man, so warranted, is a wicked and seditious libel. If he was a dupe, let me ask you who was the impostor? I blush and I shrink with shame and detestation from that meanness of dupery and servile complaisance, which could make that dupe a victim to the accusation of that impostor.

You perceive, gentlemen, that I am going into the merits of this publication, before I apply myself to the question which is first in order of time, namely, whether the publication, in point of fact, is to be ascribed to Mr. Rowan, or not. I have been unintentionally led into this violation of order. I should effect no purpose either of brevity or clearness by returning to the more methodical course of observation. I have been naturally drawn from it by the superior importance of the topic I am upon, namely, the merit of the publication in question.

▪ This publication, if ascribable at all to Mr. Rowan, contains four distinct subjects; the first an invitation to the volunteers to arm: upon that I have already observed; but those that remain are surely of much more importance, and no doubt are prosecuted as equally criminal. The paper next states the necessity of a reform in parliament; it states, thirdly, the necessity of an emancipation of the catholic inhabitants of Ireland; and as necessary to the achievement of all these objects, does, fourthly, state the necessity of a general delegated convention of the people.

It has been alleged that Mr. Rowan intended by this publication, to excite the subjects of this country to effect an alteration in the form of your constitution. And here, gentlemen, perhaps, you may not be unwilling to follow; a little farther than Mr. Attorney-General has done, the idea of a late prosecution in Great Britain upon the subject of a public libel. It is with peculiar fondness I look to that country for solid principles of constitutional liberty and judicial example. You have been pressed in no small degree with the manner in which this publication marks the different orders of our constitution, and comments upon them. Let me show you what boldness of animadversion on such topics is thought justifiable in the British nation, and by a British jury. I have in my hand the report of the trial of the printers of the Morning Chronicle, for a supposed libel against the state, and of their acquittal: let me read to you some passages from that publication, which a jury of *Englishmen* were in vain called upon to brand with the name of libel.

“ Claiming it as our indefeasible right to associate together, in a peaceable and friendly manner, for the communication of thoughts, the formation of opinions, and to promote the general happiness, we think it unnecessary to offer any apology for inviting you to join us in this manly and benevolent pursuit; the necessity of the inhabitants of every community endeavouring to procure a true knowledge of their rights, their duties, and their interests, will not be denied,

except by those who are the slaves of prejudice, or interested in the continuation of abuses. As men who wish to aspire to the title of freemen, we totally deny the wisdom and humanity of the advice, to approach the defects of government with 'pious awe and trembling solicitude.' What better doctrine could the pope or the tyrants of Europe desire? We think, therefore, that the cause of truth and justice can never be hurt by temperate and honest discussions; and that cause which will not bear such a scrutiny must be systematically or practically bad. We are sensible that those who are not friends to the general good, have attempted to inflame the public mind with the cry of 'danger,' whenever men have associated for discussing the principles of government; and we have little doubt but such conduct will be pursued in this place: we would therefore caution every honest man, who has really the welfare of the nation at heart, to avoid being led away by the prostituted clamours of those who live on the sources of corruption. We pity the fears of the timorous, and we are totally unconcerned respecting the false alarms of the venal.

"We view with concern the frequency of wars. We are persuaded that the interests of the poor can never be promoted by accession of territory, when bought at the expense of their labour and blood; and we must say, in the language of a celebrated author, 'We, who are only the people, but who pay for wars with our substance and our blood, will not cease to tell kings,' or governments, 'that to them alone wars are profitable; that the true and just conquests are those which each makes at home, by comforting the peasantry, by promoting agriculture and manufactories, by multiplying men and the other productions of nature; that then it is that kings may call themselves the *Image of God*, whose will is perpetually directed to the creation of new beings. If they continue to make us fight and kill one another, in uniform, we will continue to write and speak, until nations shall be cured of this folly.' We are certain our present

heavy burdens are owing, in a great measure, to cruel and impolitic wars, and therefore we will do all on our part, as peaceable citizens who have the good of the community at heart, to enlighten each other, and protest against them.

"The present state of the representation of the people calls for the particular attention of every man who has humanity sufficient to feel for the honour and happiness of his country; to the defects and corruptions of which, we are inclined to attribute unnecessary wars, oppressive taxes, &c. We think it a deplorable case, when the poor must support a *corruption* which is calculated to oppress them; when the labourer must give his money to afford the means of preventing him having a voice in its disposal; when the lower classes may say, 'We give you our money, for which we have toiled and sweated, and which would save our families from cold and hunger; but we think it more hard that there is nobody whom we have delegated, to see that it is not improperly and wickedly spent; we have none to watch over *our* interests; the rich only are represented.'

"An equal and uncorrupt representation would, we are persuaded, save us from heavy expenses, and deliver us from many oppressions; we will, therefore, do our duty to procure this reform, which appears to us of the utmost importance.

"In short, we see with the most lively concern, an army of placemen, pensioners, &c. fighting in the cause of corruption and prejudice, and spreading the contagion far and wide.

"We see with equal sensibility the present outcry against reforms, and a proclamation tending to cramp the liberty of the press, and discredit the true friends of the people, receiving the support of numbers of our countrymen.

"We see burdens multiplied—the lower classes sinking into poverty, disgrace, and excesses, and the means of these shocking abuses increased for the purposes of revenue.

"We ask ourselves, Are we in England?—Have our forefathers fought, bled, and conquered for liberty?—And did

they not think that the fruits of their patriotism would be more abundant in peace, plenty, and happiness?

"Is the condition of the poor never to be improved?—

Great Britain must have arrived at the highest degree of national happiness and prosperity, and our situation must be too good to be mended, or the present outcry against reforms and improvements is inhuman and criminal. But we hope our condition will be speedily improved, and to obtain so desirable a good is the object of our present association; a union founded on principles of benevolence and humanity; disclaiming all connection with riots and disorder, but firm in our purpose, and warm in our affections for liberty.

"Lastly—We invite the friends of freedom throughout Great Britain to form similar societies, and to act with unanimity and firmness; till the people be too wise to be imposed upon, and their influence in the government be commensurate with their dignity and importance.

"THEN SHALL WE BE FREE AND HAPPY."

Such, gentlemen, is the language, which a subject of Great Britain thinks himself warranted to hold, and upon such language has the corroborating sanction of a *British* jury been stamped by a verdict of acquittal. Such was the honest and manly freedom of publication, in a country, too, where the complaint of abuses has not half the foundation it has here. I said I loved to look to England for the principles of judicial example. I say to you, that it depends on *your* spirit whether I shall look to it hereafter with sympathy or with shame. Be pleased, now, gentlemen, to consider whether the statement of the imperfection in your representation, has been made with a desire of inflaming an attack upon the public tranquillity, or with an honest purpose of procuring a remedy for an actually existing grievance.

It is impossible not to revert to the situation of the times; and let me remind you, that whatever observations of this kind I am compelled thus to make in a court of justice, the uttering of them in this place is not imputable to my client,

but to the necessity of defence imposed upon him by this extraordinary prosecution.

Gentlemen, the representation of your people is the vital principle of their political existence; without it, they are dead, or they live only to servitude; without it, there are two estates acting upon and against the third, instead of acting in coöperation with it; without it, if the people are oppressed by their judges, where is the tribunal to which their judges can be amenable? without it, if they are trampled upon and plundered by a minister, where is the tribunal to which the offender shall be amenable? without it, where is the ear to hear, or the heart to feel, or the hand to redress their sufferings? Shall they be found, let me ask you, in the accursed band of imps and minions that bask in their disgrace, and fatten upon their spoils, and flourish upon their ruin? But let me not put this to you as a merely speculative question. It is a plain question of fact: rely upon it, physical man is everywhere the same; it is only the various operation of moral causes that gives variety to the social or individual character and condition. How happens it, that modern slavery looks quietly at the despot on the very spot where Leonidas expired? The answer is easy; Sparta has not changed her climate, but she has lost that government which her liberty could not survive.

I call you, therefore, to the plain question of fact; this paper recommends a reform in parliament; I put that question to your consciences, do you think it needs that reform? I put it boldly and fairly to you, do you think the people of Ireland are represented as they ought to be? Do you hesitate for an answer? If you do, let me remind you, that, until the last year, 3,000,000 of your countrymen have by the express letter of the law been excluded from the reality of actual, and even from the phantom of virtual, representation. Shall we then be told that this is only the affirmation of a wicked and seditious incendiary? If you do not feel the mockery of such a charge, look at your country; in what state do

you find it? Is it in a state of tranquillity and general satisfaction? These are traces by which good is ever to be distinguished from bad government. Without any very minute inquiry or speculative refinement, do you feel that a veneration for the law, a pious and humble attachment to the constitution, form the political morality of your people? Do you find that comfort and competency among your people, which are always to be found where the government is mild and moderate; where taxes are imposed by a body who have an interest in treating the poorer orders with compassion, and preventing the weight of taxation from pressing sore upon them?

Gentlemen, I mean not to impeach the state of your representation; I am not saying that it is defective, or that it ought to be altered or amended, nor is this a place for me to say, whether I think that three millions of the inhabitants of a country whose whole number is but four, ought to be admitted to any efficient situation in the state; it may be said, and truly, these are not questions for either of us directly to decide; but you cannot refuse them some passing consideration at least, when you remember, that on this subject the real question for your decision is, whether the allegation of a defect in your constitution is so utterly unfounded and false, that you can ascribe it only to the malice and perverseness of a wicked mind, and not to the innocent mistake of an ordinary understanding; whether it cannot be mistake; whether it can be only sedition.

And here, gentlemen, I own I cannot but regret, that one of our countrymen should be criminally pursued for asserting the necessity of a reform, at the moment when that necessity seems admitted by the parliament itself; that this unhappy reform shall at the same moment be a subject of legislative discussion and criminal prosecution! Far am I from imputing any sinister design to the virtue or wisdom of our government, but who can avoid feeling the deplorable impression that must be made on the public mind, when the demand for that reform is answered by a criminal information?

I am the more forcibly impressed by this concern, when I consider, that when this information was first put upon the file, the subject was mentioned in the house of commons. Some circumstances retarded the progress of the inquiry there, and the progress of the information was equally retarded here. The first day of this session, you all know, that subject was again brought forward in the house of commons, and, as if they had slept together, this prosecution was also revived in the court of king's bench, and that before a jury, taken from a panel partly composed of those very members of parliament, who, in the house of commons, must debate upon this subject as a measure of public advantage, which they might have here to consider as a public crime.

This paper, gentlemen, insists upon the necessity of emancipating the catholics of Ireland, and that is charged as a part of the libel. If they had kept this prosecution impending for another year, how much would remain for a jury to decide upon, I should be at a loss to discover. It seems as if the progress of public reformation was eating away the ground of the prosecution. Since the commencement of the prosecution, this part of the libel has unluckily received the sanction of the legislature. In that interval our catholic brethren have obtained that admission, which it seems it was a libel to propose: in what way to account for this, I am really at a loss. Have any alarms been occasioned by the emancipation of our catholic brethren? Has the bigoted malignity of any individuals been crushed? Or, has the stability of the government, or has that of the country been weakened? Or, is one million of subjects stronger than three millions? Do you think that the benefit they received should be poisoned by the stings of vengeance? If you think so, you must say to them, "You have demanded your emancipation, and you have got it; but we abhor your persons, we are outraged at your success; and we will stigmatize, by a criminal prosecution, the relief which you have obtained from the voice of your country." I ask you, gentlemen, do you think as

honest men, anxious for the public tranquillity, conscious that there are wounds not yet completely cicatrized, that you ought to speak this language at this time, to men who are too much disposed to think that in this very emancipation they have been saved from their own parliament by the humanity of their sovereign? Or, do you wish to prepare them for the revocation of these improvident concessions? Do you think it wise or humane, at this moment, to insult them, by sticking up in a pillory the man who dared to stand forth their advocate? I put it to your oaths, do you think that a blessing of that kind, that a victory obtained by justice over bigotry and oppression, should have a stigma cast upon it by an ignominious sentence upon men bold and honest enough to propose that measure; to propose the redeeming of religion from the abuses of the church—the reclaiming of three millions of men from bondage, and giving liberty to all who had a right to demand it—giving, I say, in the so much censured words of this paper, “UNIVERSAL EMANCIPATION!” I speak in the spirit of the British law, which makes liberty commensurate with, and inseparable from, the British soil—which proclaims, even to the stranger and the sojourner, the moment he sets his foot upon British earth, that the ground on which he treads is holy, and consecrated by the genius of UNIVERSAL EMANCIPATION. No matter in what language his doom may have been pronounced; no matter what complexion incompatible with freedom, an Indian or an African sun may have burnt upon him; no matter in what disastrous battle his liberty may have been cloven down; no matter with what solemnities he may have been devoted upon the altar of slavery; the first moment he touches the sacred soil of Britain, the altar and the god sink together in the dust; his soul walks abroad in her own majesty; his body swells beyond the measure of his chains, that burst from around him, and he stands redeemed, regenerated, and disenthralled, by the irresistible genius of UNIVERSAL EMANCIPATION.

[Here Mr. Curran was interrupted by a sudden burst of applause from

the court and hall. After some time, silence was restored by the authority of Lord Clonmell, who acknowledged the pleasure which he himself felt at the brilliant display of professional talent, but disapproved of any intemperate expressions of applause in a court of justice.]

Mr. Curran then proceeded. Gentlemen, I am not such a fool as to ascribe any effusion of this sort to any merit of mine.

It is the mighty theme, and not the inconsiderable advocate, that can excite interest in the hearer. What you hear is but the testimony which nature bears to her own character; it is the effusion of her gratitude to that power which stamp that character upon her.

And, gentlemen, permit me to say, that if my client had occasion to defend his cause by any mad, or drunken appeals to extravagance or licentiousness, I trust, in God, I stand in that situation, that, humble as I am, he would not have resorted to me to be his advocate. I was not recommended to his choice by any connection of principle or party, or even private friendship; and, saying this, I cannot but add, that I consider not to be acquainted with such a man as Mr. Rowan, a want of personal good fortune.

Gentlemen, upon this great subject of reform and emancipation, there is a latitude and boldness of remark, justifiable in the people, and necessary to the defence of Mr. Rowan, for which the habits of professional studies, and technical adherence to established forms, have rendered me unfit. It is, however, my duty, standing here as his advocate, to make some few observations to you, which I conceive to be material.

Gentlemen, you are sitting in a country that has a right to the British constitution, and which is bound by an indissoluble union with the British nation. If you were now even at liberty to debate upon that subject—if you even were not by the most solemn compacts, founded upon the authority of your ancestors and of yourselves, bound to that alliance, and had an election now to make, in the present unhappy state of

Europe—if you had heretofore been a stranger to Great Britain, you would now say, we will enter into society and union with you. *Una salus ambobus. erit, commune periculum.* But to accomplish that union, let me tell you, you must learn to become like the English people : it is vain to say you will protect their freedom, if you abandon your own. The pillar whose base has no foundation, can give no support to the dome under which its head is placed ; and if you profess to give England that assistance which you refuse to yourselves, she will laugh at your folly, and despise your meanness and insincerity.

Let us follow this a little farther ; I know you will interpret what I say with the candour in which it is spoken. England is marked by a natural avarice of freedom, which she is studious to engross and accumulate, but most unwilling to impart, whether from any necessity of her policy, or from her weakness, or from her pride, I will not presume to say ; but that so is the fact, you need not look to the east, or to the west—you need only look to yourselves.

In order to confirm that observation, I would appeal to what fell from the learned counsel for the crown, that notwithstanding the alliance subsisting for two centuries past, between the two countries, the date of liberty in one goes no further back than the year 1784.

If it required additional confirmation, I should state the case of the invaded American, and the subjugated Indian, to prove that the policy of England has ever been to govern her connections more as colonies than allies ; and it must be owing to the great spirit indeed of Ireland, if she shall continue free. Rely upon it, she will ever have to hold her course against an adverse current ; rely upon it, if the popular spring does not continue firm and elastic, a short interval of debilitated nerve and broken force will send you down the stream again, and reconsign you to the condition of a province.*

* The orator was here prophetic. In a very few years, an adverse cur-

If such should become the fate of your constitution, ask yourselves what must be the motives of your government? It is easier to govern a province by a faction, than to govern a coördinate country by coördinate means. I do not say it is now, but it will be always thought easiest by *the managers of the day*, to govern the Irish nation by the agency of such a faction, as long as this country shall be found willing to let her connection with Great Britain be preserved only by her own degradation. In such a precarious and wretched state of things, if it shall ever be found to exist, the true friend of Irish liberty, and British connection, will see that the only means of saving both must be, as Lord Chatham expressed it, "the infusion of new health and blood into the constitution." He will see how deep a stake each country has in the liberty of the other; he will see what a bulwark he adds to the common cause, by giving England a coördinate and cointerested ally, instead of an oppressed, enfeebled, and suspected dependant; he will see how grossly the credulity of Britain is abused by those who make her believe, that her solid interest is promoted by our depression; he will see the desperate precipice to which she approaches by such a conduct, and, with an animated and generous piety, he will labour to avert her danger. But, gentlemen of the jury, what is likely to be his fate? The interest of the sovereign must be, for ever, the interest of his people, because his interest lives beyond his life; it must live in his fame—it must live in the tenderness of his solicitude for an unborn posterity—it must live in that heart-attaching bond, by which millions of men have united the destinies of themselves and their children with his, and call him by the endearing appellation of king and father of his people.

But, what can be the interest of such a government as I have described? Not the interest of the king—not the interest of the people; but the sordid interest of the hour—the interest

rent overwhelmed all her energies, and power and corruption swallowed up all her rights. Ireland lost her parliament and the semblance of freedom—

in deceiving the one, and in oppressing and deforming the other—the interest of unpunished rapine, and unmerited favour—that odious and abject interest, that prompts them to extinguish public spirit in punishment or in bribe, and to pursue every man, even to death, who has sense to see, and integrity and firmness enough to abhor and oppose them. What, therefore, I say, gentlemen, will be the fate of the man who embarks in an enterprise of so much difficulty and danger? I will not answer it. Upon that hazard has my client put every thing that can be dear to man; his fame, his fortune, his person, his liberty, and his children, but with what event, your verdict only can answer, and to that I refer your country.

Gentlemen, there is a fourth point remaining. Says this paper, “For both these purposes, it appears necessary that provincial conventions should assemble preparatory to the convention of the protestant people. The delegates of the catholic body are not justified in communicating with individuals, or even bodies of an inferior authority; and, therefore, an assembly of a similar nature and organization is necessary to establish an intercourse of sentiment, a uniformity of conduct, a united cause, and a united nation. If a convention on the one part does not soon follow, and is not connected with that on the other, the common cause will split into partial interests; the people will relax into inattention and inertness; the union of affection and exertion will dissolve; and, too probably, some local insurrection, instigated by the malignity of our common enemy, may commit the character, and risk the tranquillity of the island, which can be obviated only by the influence of an assembly arising from, and assimilated with, the people, and whose spirit may be, as it were, knit with the soul of the nation, unless the sense of the protestant people be, on their part, as fairly collected and as judiciously directed, unless individual exertion consolidates into collective strength, unless the particles unite into one mass, we may perhaps serve some person or some party

for a little, but the public not at all. The nation is neither insolent, nor rebellious, nor seditious; whilst it knows its rights, it is unwilling to manifest its powers; it would rather supplicate administration to anticipate revolution by well-timed reform, and to save their country in mercy to themselves."

Gentlemen, it is with something more than common reverence—it is with a species of terror, that I am obliged to tread this ground. But what is the idea put in the strongest point of view? We are willing not to manifest our powers, but to supplicate administration to anticipate revolution; that the legislature may save the country in mercy to itself.

Let me suggest to you, gentlemen, that there are some circumstances which have happened in the history of this country, that may better serve as a comment upon this part of the case than any I can make. I am not bound to defend Mr. Rowan as to the truth or wisdom of the opinions he may have formed. But if he did really conceive the situation of the country such as that the not redressing her grievances might lead to a convulsion, and of such an opinion not even Mr. Rowan is answerable here for the wisdom, much less shall I insinuate any idea of my own upon so awful a subject; but if he did so conceive the fact to be, and acted from the fair and honest suggestion of a mind anxious for the public good, I must confess, gentlemen, I do not know in what part of the British constitution to find the principle of his criminality.

But, gentlemen, be pleased further to consider, that he cannot be understood to put the fact on which he argues on the authority of his assertion. The condition of Ireland was as open to the observation of every other man as to that of Mr. Rowan. What does this part of the publication amount to? In my mind, simply to this: "the nature of oppression in all countries is such, that although it may be borne to a certain degree, it cannot be borne beyond that degree; you find it exemplified in Great Britain; you find the people of England

patient to a certain point, but patient no longer. That infuriated monarch, James II. experienced this. The time did come, when the measure of popular suffering, and popular patience was full; when a single drop was sufficient to make the waters of bitterness to overflow. I think this measure, in Ireland, is brimful at present; I think the state of representation of the people in parliament is a grievance; I think the utter exclusion of three millions of people is a grievance of that kind that the people are not likely long to endure; and the continuation of which may plunge the country into that state of despair which wrongs exasperated by perseverance never fail to produce." But to whom is even this language addressed? Not to the body of the people, on whose temper and moderation, if once excited, perhaps, not much confidence could be placed; but to that authoritative body whose influence and power would have restrained the excess of the irritable and tumultuous; and for that purpose expressly does this publication address the volunteers. "We are told that we are in danger: I call upon you, the constitutional saviours of Ireland, to defend the country to which you have given political existence, and use whatever sanction your great name, your sacred character, and the weight you have in the community, must give you, to repress wicked designs, if any there are."

"We feel ourselves strong, the people are always strong—the public chains can only be rivetted by the public hands; look to those devoted regions of southern despotism—behold the expiring victim on his knees, presenting the javelin, reeking with his blood, to the ferocious monster who returns it into his heart. Call not that monster the tyrant; he is no more than the executioner of that inhuman tyranny which the people practise upon themselves, and of which he is only reserved to be a later victim than the wretch he has sent before. Look to a nearer country, where the sanguinary characters are more legible, whence you almost hear the groans of death and torture. Do you ascribe the rapine and

murder of France to the few names that we are execrating here? or do you not see that it is the phrensy of an infuriated multitude abusing its own strength, and practising those hideous abominations upon itself. Against the violence of this strength let your virtue and influence be our safeguard."

What criminality, gentlemen of the jury, can you find in this? What at any time? But I ask you peculiarly at this momentous period, what guilt can you find in it? My client saw the scene of horror and blood which covers almost the face of Europe; he feared that causes, which he thought similar, might produce similar effects, and he seeks to avert those dangers by calling the united virtue and tried moderation of the country into a state of strength and vigilance: Yet this is the conduct which the prosecution of this day seeks to stigmatize. And this is the language for which this paper is reprobated to day, as tending to turn the hearts of the people against their sovereign, and inviting them to overturn the constitution.

Let us now, gentlemen, consider the concluding part of this publication. It recommends a meeting of the people to deliberate on constitutional methods of redressing grievances. Upon this subject I am inclined to suspect that I have in my youth taken up crude ideas, not founded perhaps in law, but I did imagine that when the bill of rights restored the right of petitioning for the redress of grievances, it was understood that the people might boldly state among themselves that grievances did exist; that they might lawfully assemble themselves in such a manner as they might deem most orderly and decorous. I thought I had collected it from the greatest luminaries of the law: The power of petitioning seemed to imply the right of assembling for the purpose of deliberation. The law requiring a petition to be presented by a limited number, seemed to me to admit that the petition might be prepared by any number whatever, provided in doing so, they did not commit any breach or violation of the peace. I know that there has been a law passed in the Irish parlia-

ment of last year which may bring my former opinion into a want of authority. That law declares, "that no body of men may delegate a power to any similar number, to act, think, or petition for them!" If that law had not passed, I should have thought that the assembling by a delegated convention was recommended, in order to avoid the tumult and disorder of a promiscuous assembly of the whole mass of the people. I should have conceived before that act, that any law to abridge the orderly appointment of the few, to consult for the interest of the many, and thus force the many to consult by themselves or not at all, would in fact be a law, not to restrain, but to promote insurrection; but that law has spoken, and my error must stand corrected. Of this, however, let me remind you; you are to try this part of the publication by what the law was then, not by what it is now. How was it understood until last session of parliament? You had both in England and Ireland, for the last ten years, these delegated meetings. The volunteers of Ireland, in 1782, met by delegation; they framed a plan of parliamentary reform; they presented it to the representative wisdom of the nation; it was not received, but no man ever dreamed that it was not the right of the subject to assemble in that manner. They assembled by delegation at Dungannon; and to show the idea then entertained of the legality of their public conduct, that same body of volunteers was thanked by both houses of parliament, and their delegates most graciously received at the throne! The other day you had delegated representatives for the catholics of Ireland, publicly elected by the members of that persuasion, and sitting in convention in the heart of your capital, carrying on an actual treaty with the existing government, and under the eye of your own parliament, which was then assembled! You have seen the delegates from that convention carry the complaints of their grievances to the foot of the throne; from whence they brought back to that convention, the auspicious tidings of that redress which they had been refused at home.

Such, gentlemen, have been the means of popular communication and discussion, which until the last session have been deemed legal in this country, as, happily for the sister kingdom, they are yet considered there.

I do not complain of this act as any infraction of popular liberty: I should not think it becoming in me to express any complaint against a law, when once it becomes such. I observe only, that one mode of popular deliberation is hereby taken away, and you are reduced to a situation, in which you never stood before. You are living in a country, where the constitution is rightly stated to be only "ten years old," and where the people have not the ordinary rudiments of education. It is a melancholy story, that the lower orders of the people here have less means of being enlightened than the same class of people in other countries. If there be no means left by which public measures can be canvassed, what will be the consequence? Where the press is free, and discussion unrestrained, the mind by the collision of intercourse, gets rid of its own asperities; a sort of insensible perspiration takes place, by which those acrimonies, which would otherwise fester and inflame, are quietly dissolved and dissipated. But now, if any aggregate assembly shall meet, they are censured; if a printer publishes their resolutions, he is punished; rightly to be sure in both cases, for it has been lately done! If the people say, let us not create tumult, but meet in delegation, they cannot do it; if they are anxious to promote parliamentary reform, in that way, they cannot do it; the law of the last session has for the first time declared such meetings to be a crime! What then remains?—only the liberty of the press, that sacred palladium, which no

* Betwixt religious and political contentions and oppressions, the education of the lower orders of the Irish is miserably neglected. The carelessness, but, more probably, the *policy*, of government, will not allow them to imitate the admirable example of the Scotch; who, by the simple and obvious means of parish schools, disseminate, cheaply and generally, the first and most useful rudiments of learning to every class of the people.

influence, no power, no minister, no government, which nothing but the depravity or the folly of a jury can ever destroy.

And what calamity are the people saved from by having public communication left open to them? I will tell you, gentlemen; what they are saved from, and what the government is saved from. I will tell you also, to what both are exposed by shutting up that communication. In one case, sedition speaks aloud, and walks abroad; the demagogue goes forth, the public eye is upon him, he frets his busy hour upon the stage, but soon either weariness, or bribe, or punishment, or disappointment, bear him down, or drive him off, and he appears no more! In the other case, how does the work of sedition go forward? Night after night, the muffled rebel steals forth in the dark, and casts another and another brand upon the pile, to which, when the hour of fatal maturity shall arrive, he will apply the flame. If you doubt of the horrid consequences of suppressing the effusion of individual discontent, look to those enslaved countries where the protection of despotism is supposed to be secured by such restraints, even the person of the despot there is never in safety. Neither the fears of the despot, nor the machinations of the slave have any slumber, the one anticipating the moment of peril, the other watching the opportunity of aggression. The fatal crisis is equally a surprise upon both; the decisive instant is precipitated without warning, by folly on the one side, or by phrensy on the other, and there is no notice of the treason till the traitor acts. In those unfortunate countries (one cannot read it without horror) there are officers whose province it is to have the water which is to be drank by their rulers sealed up in bottles, lest some miscreant should throw poison in the draught!

But, gentlemen, if you wish for a nearer and more interesting example, you have it in the history of your own revolution; you have it at that memorable period, when the mo-

north found a servile acquiescence in the ministers of his folly, when the liberty of the press was trodden under foot, when venal sheriffs returned packed juries to carry into effect these fatal conspiracies of the few against the many; when the devoted benches of public justice were filled by some of those foundlings of fortune, who, overwhelmed in the torrent of corruption at an early period, lay at the bottom like drowned bodies, while soundness of sanity remained in them; but at length becoming buoyant by putrefaction, they rose as they rotted, and floated to the surface of the polluted stream, where they were drifted along, the objects of terror, and contagion, and abomination.

In that awful moment of a nation's travail, of the last gasp of tyranny, and the first breath of freedom, how pregnant is the example? The press extinguished, the people enslaved, and the prince undone.

As the advocate of society, therefore, of peace, of domestic liberty, and the lasting union of the two countries, I conjure you to guard the liberty of the press, that great centinel of the state, that grand detector of public imposture: guard it, because when it sinks, there sinks with it into one common grave, the liberty of the subject and the security of the crown.

Gentlemen, I am glad that this question has not been brought forward earlier; I rejoice for the sake of the court, of the jury, and of the public repose, that this question has not been brought forward till now. In Great Britain, analogous circumstances have taken place. At the commencement of that unfortunate war which has deluged Europe with blood, the spirit of the English people was tremblingly alive to the terror of French principles; at that moment of general paroxysm, to accuse was to convict. The danger loomed larger to the public eye, from the misty medium through which it was surveyed. We measure inaccessible heights by the shadows which they project, where the lowness and distance of the light form the length of the shade.

There is a sort of aspiring and adventurous credulity, which disdains assenting to obvious truths, and delights in catching at the improbability of circumstances, as its best ground of faith. To what other cause, gentlemen, can you ascribe that in the wise, the reflecting, the philosophic nation of Great Britain, a printer has been found guilty of a libel, for publishing those resolutions, to which the present minister of that kingdom had actually subscribed his name! To what other cause can you ascribe, what, in my mind is still more astonishing, in such a country as Scotland, a nation cast in the happy medium between the spiritless acquiescence of submissive poverty, and the sturdy credulity of pampered wealth; cool and ardent, adventurous and persevering; winging her eagle flight against the blaze of every science, with an eye that never winks, and a wing that never tires; crowned as she is with the spoils of every art, and decked with the wreath of every muse, from the deep and scrutinizing researches of her Humes, to the sweet and simple, but not less sublime and pathetic morality of her Burns*—how from the bosom of a country like that, genius, and character, and talents, should be banished to a distant barbarous soil; condemned to pine under the horrid communion of vulgar vice and base-born profligacy, for twice the period that ordinary calculation gives to the continuance of human life? But I will not further press an idea that is painful to me, and I am sure must be painful to you: I will only say, you have now an example of which neither England nor Scotland had the advantage; you have the example of the panic, the infatuation, and the contrition of both. It is now for you to decide, whether you will profit by their experience of idle panic and idle regret, or whether you meanly prefer to palliate a servile

* Here is a beautiful compliment paid to the genius and industry of Scotland. The orator then alludes to the cruel banishment of Muir, Palmer, and their associates, (by the Scotch judges,) to the barbarous shores of New Holland, where they all perished.

imitation of their frailty, by a paltry affectation of their repentance. It is now for you to show that you are not carried away by the same hectic delusions, to acts, of which no tears can wash away the consequences, or the indelible reproach.

Gentlemen, I have been warning you by instances of public intellect suspended or obscured ; let me rather excite you by the example of that intellect recovered and restored. In the case which Mr. Attorney-General has cited himself, I mean that of the trial of Lambert in England, is there a topic of invective against constituted authorities, is there a topic of abuse against every department of British government, that you do not find in the most glowing and unqualified terms in that publication, for which the printer of it was prosecuted and acquitted by an English jury ? See, too, what a difference there is between the case of a man publishing his own opinion of facts, thinking that he is bound by duty to hazard the promulgation of them, and without the remotest hope of any personal advantage, and that of a man who makes publication his trade. And, saying this, let me not be misunderstood ; it is not my province to enter into any abstract defence of the opinions of any man upon public subjects. I do not affirmatively state to you, that these grievances, which this paper supposes, do in fact exist ; yet I cannot but say, that the movers of this prosecution have forced that question upon you. Their motives and their merits, like those of all accusers, are put in issue before you ; and I need not tell you how strongly the motives and merits of any *informer* ought to influence the fate of his accusation.

I agree most implicitly with Mr. Attorney-General, that nothing can be more criminal than an attempt to work a change in the government by armed force ; and I entreat that the court will not suffer any expression of mine to be considered as giving encouragement or defence to any design to excite disaffection, to overawe, or to overturn the government ; but I put my client's case upon another ground. If he was led into an opinion of grievances where there were none ; if

he thought there ought to be a reform where none was necessary, he is answerable only for his intention. He can be answerable to you in the same way only that he is answerable to that God, before whom the accuser, the accused, and the judge must appear together; that is, not for the clearness of his understanding, but for the purity of his heart.

Gentlemen, Mr. Attorney-General has said, that Mr. Rowan did by this publication (supposing it his) recommend, under the name of equality, a general indiscriminate assumption of public rule by every the meanest person in the state. Now as we are in point of public information, there is not, I believe, any man, who thinks for a moment, who does not know, that all which the great body of the people, of any country, can have from any government, is a fair encouragement to their industry, and protection for the fruits of their labour. And, there is scarcely any man, I believe, who does not know, that if a people could become so silly as to abandon their stations in society, under pretence of governing themselves, they would become the dupes and the victims of their own folly. But does this publication recommend any such infatuated abandonment, or any such desperate assumption? I will read the words which relate to that object: "By liberty we never understand unlimited freedom; nor by equality, the levelling of property, or destruction of subordination." I ask you, with what justice, upon what principle of common sense, you can charge a man with the publication of sentiments, the very reverse of what his words avow? and that, when there is no collateral evidence, where there is no foundation whatever, save those very words, by which his meaning can be ascertained? or, if you do adopt an arbitrary principle of imputing to him *your* meaning, instead of his own, what publication can be guiltless or safe? It is a sort of accusation that I am ashamed and sorry to see introduced into a court acting on the principles of the British constitution.

In the bitterness of reproach it was said, "out of thine own mouth will I condemn thee;" from the severity of jus-

ties I demand no more. See if in the words that have been spoken, you can find matter to acquit, or to condemn. "By liberty we never understood unlimited freedom, nor by equality the levelling of property, or the destruction of subordination. This is a calumny invented by that faction, or that gang, which misrepresents the king to the people, and the people to the king, traduces one half of the nation to cajole the other, and, by keeping up distrust and division, wishes to continue the proud arbitrators of the fortune and fate of Ireland." Here you find that meaning disclaimed as a calumny, which is artfully imputed as a crime.

I say, therefore, gentlemen of the jury, as to the four parts into which the publication must be divided, I answer thus: it calls upon the volunteers. Consider the time, the danger, the authority of the prosecutors themselves for believing that danger to exist; the high character, the known moderation, the approved loyalty of that venerable institution, the similarity of the circumstances between the period at which they are summoned to take arms, and that in which they have been called upon to reassume them. Upon this simple ground, gentlemen, you will decide, whether this part of the publication was libellous and criminal, or not.

As to reform, I could wish to have said nothing upon it; I believe I have said enough. If he thought the state required it, he acted like an honest man—he discharged his duty in telling the country that he thought so.

As to the emancipation of the catholics, I cannot but say, that Mr. Attorney-General did very wisely in keeping clear of that. Yet, gentlemen, I need not tell you how important a figure it was intended to make upon the scene, though, from unlucky accidents, it has become necessary to expunge it during the rehearsal.

Of the concluding part of this publication, the convention which it recommends, I have spoken already. I wish not to trouble you with saying more upon it. I feel that I have already trespassed much upon your patience. In truth, upon

a subject embracing such a variety of topics, a rigid observance either of conciseness or arrangement could perhaps scarcely be expected. It is, however, with pleasure I feel I am drawing to a close, and that only one question remains, to which I beg your attention.

Whatever, gentlemen, may be your opinion of the meaning of this publication, there yet remains a great point for you to decide upon; namely, whether, in point of fact, this publication be imputable to Mr. Rowan, or not? whether he did publish it or not? and two witnesses are called to that fact, one of the name of Lyster, the other Morton. You must have observed, that Morton gave no evidence upon which that paper could even have been read; he produced no paper, he identified no paper; so that, in point of law, there was no evidence to be given to a jury; and, therefore, it turns entirely upon the evidence of the other witness. He has stated that he went to a public meeting, in a place where there was a gallery crowded with spectators; and that he there got a printed paper, the same which has been read to you.

I know you are well acquainted with the fact, that the credit of every witness must be considered by, and rest with, the jury. They are the sovereign judges of that circumstance, and I will not insult your feelings, by insisting on the caution with which you should watch the testimony of a witness that seeks to affect the liberty, or property, or character of your fellow citizens. Under what circumstances does this evidence come before you? The witness says, he has got a commission in the army by the interest of a lady, from a person then high in administration. He told you that he made a memorandum upon the back of that paper, it being his general custom, when he got such papers to make an endorsement upon them; that he did this from mere fancy; that he had no intention of giving any evidence on the subject; he took it with no such view!

There is something whimsical enough in this curious story. Put his credit upon the positive evidence adduced to his character. Who he is, I know not; I know not the man; but his credit is impeached. Mr. Blake was called; he said he knew him. I asked him, "Do you think, Sir, that Mr. Lyster is, or is not, a man deserving credit upon his oath." If you find a verdict of conviction, it can be only upon the credit of Mr. Lyster. What said Mr. Blake? Did he tell you that he believed he was a man to be believed upon his oath? He did not attempt to say that he was. The best he could say was, that he would hesitate. Do you believe Blake? Have you the same opinion of Lyster's testimony that Mr. Blake has? Do you know Lyster? If you do know him, and know that he is credible, your knowledge should not be shaken by the doubts of any man. But, if you do not know him, you must take his credit from an unimpeached witness swearing "that he would hesitate to believe him."

In my mind, there is a circumstance of the strongest nature that came out from Lyster on the table. I am aware, that a very respectable man, if impeached by surprise, may not be ready prepared to repel a wanton calumny by contrary testimony. But, was Lyster unapprized of this attack upon him? What said he? "I knew that you had Blake to examine against me; you have brought him here for that purpose." He knew the very witness that was to be produced against him; he knew that his credit was impeached, and yet he produced no person to support that credit. What said Mr. Smyth? "From my knowledge of him, I would not believe him upon his oath."

Mr. Attorney-General. I beg pardon, but I must set Mr. Curran right. Mr. Lyster said, he heard Blake would be here, but not in time to prepare himself.

Mr. Curran. But, what said Mrs. Hatchell? Was the production of that witness a surprise upon Mr. Lyster? her cross-examination shows the fact to be the contrary. The learned counsel, you see, was perfectly apprized of a chain of private circumstances to which he pointed his questions.

Did he know these circumstances by inspiration? No; they could come only from Lyster himself. I insist, therefore, the gentleman knew his character was to be impeached; his counsel knew it; and not a single witness has been produced to support it; then consider, gentlemen, upon what ground you can find a verdict of conviction against my client, when the only witness produced to the fact of publication is impeached, without even an attempt to defend his character. Many hundreds, he said, were at that meeting; why not produce one of them to swear to the fact of such a meeting? One he has ventured to name, but he was certainly very safe in naming a person who, he has told you, is not in the kingdom, and could not, therefore, be called to confront him.

Gentlemen, let me suggest another observation or two. If still you have any doubt as to the guilt or innocence of the defendant, give me leave to suggest to you what circumstances you ought to consider in order to found your verdict: You should consider the character of the person accused; and in this your task is easy. I will venture to say, there is not a man in this nation more known than the gentleman who is the subject of this prosecution, not only by the part he has taken in public concerns, and which he has taken in common with many, but still more so by that extraordinary sympathy for human affliction, which, I am sorry to think, he shares with so small a number. There is not a day that you hear the cries of your starving manufacturers in your streets, that you do not also see the advocate of their sufferings—that you do not see his honest and manly figure, with uncovered head soliciting for their relief, searching the frozen heart of charity, for every string that can be touched by compassion, and urging the force of every argument and every motive, save that which his modesty suppresses—the authority of his own generous example. Or if you see him not there, you may trace his steps to the private abode of disease, and famine, and despair, the messenger of Heaven, bearing with him food, and medicine, and consolation. Are these the mate-

rials of which anarchy and public rapine are to be formed? Is this the man on whom to fasten the abominable charge of goading on a frantic populace to mutiny and bloodshed? Is this the man likely to apostatize from every principle that can bind him to the state, his birth, his property, his education, his character, and his children? Let me tell you, gentlemen of the jury, if you agree with his prosecutors, in thinking that there ought to be a sacrifice of such a man, on such an occasion, and upon the credit of such evidence, you are to convict him—never did you, never can you give a sentence, consigning any man to public punishment with less danger to his person or to his fame: For where could the hireling be found to fling contumely or ingratitude at his head, whose private distresses he had not laboured to alleviate, or whose public condition he had not laboured to improve.

I cannot, however, avoid adverting to a circumstance that distinguishes the case of Mr. Rowan from that of a late sacrifice in a neighbouring kingdom.*

The severer law of that country, it seems, and happy for them that it should, enables them to remove from their sight the victim of their vengeance—the more merciful spirit of our law deprives *you* of that consolation; *his* sufferings must remain for ever before your eyes, a continual call upon your shame and your remorse. But those sufferings will do more; they will not rest satisfied with your unavailing contrition, they will challenge the great and paramount inquest of society; the man will be weighed against the charge, the witness and the sentence; and impartial justice will demand, why has an *Irish* jury done this deed? The moment he ceases to be regarded as a criminal, he becomes of necessity an accuser. And let me ask you, what can your most zealous defenders be prepared to answer to such a charge?—When your sentence shall have sent him forth to that stage which

* Here Mr. Curran again alludes to the harsh conduct of the Scottish judges, in the banishment and tragical fate of the Scotch reformers.

guilt alone can render infamous, let me tell you, he will not be like a little statue upon a mighty pedestal, diminishing by elevation; but he will stand a striking and imposing object upon a monument, which, if it does not, and it cannot record the atrocity of his crime, must record the atrocity of your conviction. And upon this subject, credit me when I say, that I am still more anxious for you than I can possibly be for him. I cannot but feel the peculiarity of your situation. Not the jury of his own choice, which the law of England allows, but which ours refuses; collected in that box by a person, certainly no friend to Mr. Rowan, certainly not very deeply interested in giving him a very impartial jury. Feeling this, as I am persuaded you do, you cannot be surprised, however you may be distressed, at the mournful presage with which an anxious public is led to fear the worst from your possible determination. But I will not, for the justice and honour of our common country, suffer my mind to be borne away by such melancholy anticipation; I will not relinquish the confidence, that this day will be the period of his sufferings; and however mercilessly he has been hitherto pursued, that your verdict will send him home to the arms of his family, and the wishes of his country. But if, which Heaven forbid, it hath still been unfortunately determined, that because he has not bent to power and authority, because he would not bow down before the golden calf and worship it, he is to be bound and cast into the furnace; I do trust in God, that there is a redeeming spirit in the constitution, which will be seen to walk with the sufferer through the flames, and to preserve him unhurt by the conflagration.

[At the conclusion of Mr. Curran's speech, there was another burst of applause through the court and hall, which lasted several minutes, to the great annoyance of his lordship the judge, &c.]

Mr. Attorney-General rose, and with warmth averred, that the insinuation of Mr. Curran, that he had been instructed to commence this prosecution by government, was absolutely

false; and that, without the least intention to oppress or injure Mr. Rowan, his trial had been unavoidably delayed until the present time, owing to an error in the record, the absence of witnesses, and the great press of public business.

Mr. Prime Serjeant then addressed the jury. He recapitulated and collated the evidence, and endeavoured to show, from the whole of the testimony given in, that there could be no doubt but the libel was published by the traverser.

Lord Clonmell, Chief Justice, then delivered a charge to the jury. His lordship commented much on the libel, as set forth in the information, introducing very severe strictures, and showing its wicked tendency. He then summed up the testimony; but what his lordship's directions to the jury were concerning the evidence of Lyster, (who his lordship admitted to be the only witness that proved the publication,) we cannot precisely say, there being a *hiatus** in that part of the charge in the trial at large, which we regret, as the reader will hereafter perceive that it became a subject of contention between the court and the defendant's counsel.

After the jury heard the charge, they retired, and in a few minutes, returned with a verdict GUILTY.† Mr. Rowan was then ordered into custody, and was, accordingly, conveyed to prison, attended by both the sheriffs, and a formidable array of horse and foot guards.

* "The editor is here under the necessity of introducing a *hiatus*, the printer having refused to print this part according to the notes furnished to him by the editor." See trial at large, p. 83.

† When this verdict was brought in, there was a clap of approbation in the outer hall, from a misconception that the jury had acquitted Mr. Rowan—but, when the verdict was repeated, and the word guilty understood, the clap was changed into hootings, and hissings, and groans, that lasted till the court broke up.

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Mr. Rowan being brought to the bar, his counsel moved to have the verdict set aside, and a new trial awarded, upon the four following grounds, supported by affidavits:

1. That Lyster, on whose testimony solely the verdict was founded, deserved not the least credit.

2. That one of the jurors harboured the deepest malignity and prejudice against the traverser, and had declared his enmity and prejudice before he was sworn.

3. That the sheriff, who summoned and arrayed the jury, was partial, having purposely empannelled men hostile to Mr. Rowan and his principles.

4. That the judge had misdirected the jury.

Mr. CURRAN. It was an early idea, that a verdict in a criminal case could not be set aside *inconsulto rege*, but the law had stood otherwise without a doubt, to impeach its principle for the last two reigns.

Common sense would say, that the discretion of the court should go at least as far in criminal as in civil cases; and very often to go no further would be to stop far short of what was right, as in those great questions where the prosecution may be considered either as an attempt to extinguish liberty, or as a necessary measure for the purpose of repressing the virulence of public licentiousness and dangerous faction; where there can be no alternative between guilt or martyrdom; where the party prosecuted must either be considered as a culprit sinking beneath the weight of his own crimes, or a victim sacrificed to the vices of others. But when it clearly appears, that the party has fallen a prey to a persecuting combination, there remains but one melancholy question, *how far did that combination reach?*

There have been two cases lately decided in this very court, the King and Pentland, where the motion was made and

refused, and the King and Bowen, where it was granted; both of which show, that captious sophistry, and technical pedantry had here, as well as in England, given way to liberal and rational inquiry; and that the court would not now, in their discretion, refuse a motion of this kind, unless they could, at the same time, lay their hands upon their hearts, and say, they believed in their consciences that justice had been done. Such was the manly language of one of their lordships, (Mr. Justice Downes,) and such the opinion of the court on a former occasion.

He then cited 7 Mod. 57. as referred to in Bacon, tit. *Trial*, to show, that where there was good ground of challenge to a juror, not known at the trial, it was sufficient cause for setting aside the verdict.

In England they have a particular act of parliament, entitling the party to strike a special jury to try the fact, and then he has time between the striking and the trial, to question the propriety of that jury; here my client had no previous information, till the instant of trial, who his jurors were to be.

There are certain indulgences granted at times, perhaps by the connivance of humanity, which men, who are not entitled to demand them in an open court, obtain, nevertheless, by sidelong means, and perhaps the little breach which affords that light to the mind of the man accused, is a circumstance which the court would feel pain, even if called upon, to say should in all cases be prevented; but to overturn the principles and authorities, for the purpose of oppressing the subject, is what this court, I hope, will never do.

The first of the affidavits I shall consider is that of the traverser. I do not recollect whether it states the sheriff, in avowed terms, to be an emissary or a hireling agent of the castle, therefore do not state it from the affidavit; but he swears, "that he does believe, that he did labour to bring into the box a jury full of prejudices and of the blackest impressions," instead of having, as they ought, fair and impartial minds, and souls like white paper.

This sheriff now stands in court; he might have denied it if he would; he had an opportunity of answering it; but he has left it an undenied assertion—he was not certainly obliged to answer it, for no man is bound to convict himself. But there is a part of the charge which amounts, at least, to this: "Your heart was poisoned against me, and you collected those to be my judges, who, if they could not be under the dominion of bad dispositions, might be, at least, the dupes of good." The most favourable thing that can be said is this, you sought to bring against me honest prejudices, but you brought against me wicked ones. The very general charge, that he sought for persons, who he knew were most likely to bring prejudices with them into the jury box, is a part of the affidavit that it was incumbent on him to answer, if he could.

I do not contend that what is charged in the affidavit would have been a ground of principal challenge to the array; but hold it to be the better opinion, that a challenge to the array for favour, does well lie in the mouth of the defendant.

The ancient notion was, you shall not challenge the array for favour, where the king is a party; the king only can challenge for favour, for the principle was, that every man ought to be favourable to the crown; but, thank God, the advancement of legal knowledge, and the growing understanding of the age, has dissipated such illiberal and mischievous conceptions.

But I am putting too much stress upon such technical, discarded, and antiquated scruples. The true question has been already stated from the authority of Mr. Justice Downes, and that question is, "Has justice been done?"

Is it a matter, upon which scarce any understanding would condescend to hesitate, whether a man had been fairly tried, whose triors had been collected together by an avowed enemy, whose conduct had been such as to leave no doubt that he had purposely brought prejudiced men into the box?

In every country where freedom obtains, there must subsist

parties. In this country and in Great Britain, I trust, there never will be a time, when there will not be found men zealous for the government of the day, and men always zealous and enthusiastic in the cause of popular freedom and of the public rights. If, therefore, a person in public office suffers his prejudices, however honestly anxious he may be for a prosecution carried on by those to whom he is attached, to influence him so far as to choose men, to his knowledge, devoted to the principles he espouses, it is an error which a high court of judicature, seeking to do right and justice, will not fail to correct.

A sheriff, in such a case, might not have perceived the partiality of his conduct, because he was surveying it through the medium of prejudice and habitual corruption. But it is impossible to think that this sheriff meant to be impartial; it is an interpretation more favourable than his conduct will allow of: if he deserves any credit at all, it is in not answering the charge made against him: at the same time, by not answering it, he has left unimpeached the credit of the charge itself.

[Here some altercation took place, and Lord Clonmel interposed, saying, that the counsel had certainly a right to argue it upon the ground that the sheriff was biassed, and did return a jury prejudiced against the traverser.]

Mr. Curran was then proceeding to observe upon the expression of one of the jury, sworn to in another affidavit; "That there would be no safety in the country, until the defendant was either hanged or banished;" when it was asked by the court, whether the time of its coming to the knowledge of the traverser that the sheriff was biassed, was stated in the affidavit?

Mr. Curran answered, he was in prison, and could not have the attendance of those counsel, whose assistance he had in court; and besides, from the nature of the circumstances, it was impossible he could have been sufficiently apprized of its consequences, for he saw not that panel till

the day of the trial, when he could not have had time to make any inquiry into the characters, dispositions, or connections of the jury. Mr. Curran then reverted to his argument on the expression of the juror.

If triors had been appointed to determine the issue favourable or not, what would have been their finding? Could they say upon their oaths, that he was not unfavourable to that party against whom he could make such a declaration?

Favour is not cause of principal challenge, which if put upon a pleading, would include the party. Favour is that which makes the man, in vulgar parlance, unfit to try the question. And as to the time these facts came to his knowledge, he has sworn that he was utterly ignorant of them at the time of his coming into court to take his trial.

I will not glance at the character of any absent noble person, high in office; but let it be remembered, "that it is a government prosecution," and that the witness has, from a low and handicap situation, scraped himself into preferment, perhaps, for I will put the best construction upon it, by offering himself as a man honestly anxious for the welfare of his country; in short, it is too obvious to require any comment, what the nature of the whole transaction has been, that he had got his commission as a compensation, *pro labore impendendo*, and came afterwards into court to pay down the stipulated purchase!

Had this been an unbiassed jury, was there not something in all these circumstances, that might have afforded more deliberation, that of one minute per man, for only so long was the jury out; and had this been a fair witness, would he have lain down under a charge, which, if true, ought not only to damn this verdict but his character for ever? What would a corps of brother officers think of a person charged, upon oath, with the commission of two wilful perjuries, and that charge remaining undenied? Here is an undenied charge in point of fact, and although I do not call upon the court to say, that this is a guilty and abominable person, yet the suspicion is

strongly so, and must be so considered. This was at least a verdict, where the evidence went to the jury under slighter blemishes than it will if my client has the advantage of another trial, for then it will be put out of the power of man to doubt that this witness has been perjured. He had notice both here and at the trial of the aspersions on his character, and yet he has not called a human being to say that he entertained a contrary opinion of him.

Was he known anywhere? Did he crawl unobserved to the castle? Was it without the aid or knowledge of any body that that gaudy plumage grew on him, in which he appeared in court? If he was known for any thing else than what he is stated to be, it was, upon that day, almost a physical impossibility, in a court-house which almost contained the country, not to have found some person, to give some sort of testimony respecting his general character. For though no man is bound to be ready at all times to answer particular charges, yet every man is supposed to come with his public attestation of common and general probity. But he has left that character, upon the merits of which my client is convicted, unsupported, even by his own poor corporal swearing. You are called upon, then, to say, whether upon the evidence of a being of *this* kind, such a man as *that* is to be convicted, and sentenced to punishment, in a country where humanity is the leading feature even of the criminal law.

He then observed upon the second witness. A man coming to support the credit of another collaterally is himself particularly pledged; then what was his testimony? He did not know whether Mr. Giffard was concerned in the newspaper!!! And now you have the silence of Giffard himself, in not answering Mr. Rowan's affidavit to contradict that. And next, he did not know whether his own cousin-german was the relation of their common uncle!!! I call upon you, my lords, in the name of sacred justice, and your country, to declare, whether the melancholy scenes and murderous

plots of the meal-tub and rye-house* are to be acted over again. And whether every Titus Oates that can be found, is to be called into your courts, as the common vouchee of base and perjured accusation?

He then proceeded to another ground, namely, that the direction of the court was not, as he conceived, agreeable to the law of Ireland. The defence of my client (he added) was rested upon this, that there was no evidence of the fact of publication, upon the incredibility of the fact, and the circumstances of discredit in the character of the witness; yet the court made this observation: "Gentlemen, it scarcely lies in the mouth of Mr. Rowan to build a defence upon objections of this kind to the characters of witnesses, because the fact was public; there were many there; the room was crowded below; the gallery was crowded above; and the publicity of the fact enabled him to produce a number of witnesses to falsify the assertion of the prosecutor, if, in fact, it could be falsified!" Is that the principle of criminal law? Is it a part of the British law that the fate of the accused shall abide, not on the positive establishment of guilt by the prosecutor, but the negative proof of innocence by himself? Why has it been said in foolish old books, that the law supposes the innocence of every man till the contrary is proved? How has it happened, that that language has been admired for its humanity, and not laughed at for its absurdity, in which the prayers of the court are addressed to Heaven for the safe deliverance of the man accused? How comes it, that so much public time is wasted in going into evidence of guilt, if the bare accusation of a man did call upon him to go into evidence of his innocence? The force of the observation is

* See the history of the reign of Charles II. when the people of England passed from sturdy independence and fanaticism, to licentiousness and tame submission, and when all the machinery of state plots and persecutions were played off with wonderful dexterity. An impartial history of the hypocritical protector, and the wanton monarch, would afford a number of fine lessons to both divines and politicians.

this: Mr. Rowan impeaches the credit of a witness, who has sworn that he saw him present, and doing certain acts at a certain meeting; but it is asked, has he substantiated that discredit, by calling all the persons who were present, to prove his absence from that meeting, which is only stated to have existed, by a witness whom he alleges to have perjured himself. I call upon the example of judicial character, upon the faith of that high office, which is never so dignified as when it sees its errors and corrects them, to say, that the court was for a moment led away, so as to argue from the most seductive of all sophisms, that of the *positio principii*.

See what meaning is to be gathered from such words. We say, the whole that this man has sworn is a consummate lie; show it to be so, says the court, by admitting a part of it to be true. It is false swearing, it is a conspiracy of two witnesses against the defendant. Well, then it lies upon him to rebut their testimony, by proving a deal of it to be true! Is conjecture, then, in criminal cases, to stand in the place of truth and demonstration?—Why were not some of those—(I will strip the case of the honour of names which I respect)—why were not some of those, who knew that these two persons were to be brought forward, and that there were to be objections to their credit—if, as it is stated, it happened in the presence of a public crowd, rushing in from motives of curiosity, why were not numbers called on to establish that fact? On the contrary, the court have said to this effect: Mr. Rowan, you say you were not there; produce any of those persons with whom you were there, to swear you were not there! You say it was a perjury; if so, produce the people that he has perjured himself in swearing to have been there!—But as to your own being there, you can easily show the contrary of that, by producing some man that saw you there! You say you were not there? Yes. There were 150 persons there; now produce any one of these to swear they saw you there!

It is impossible for the human mind to suppose a case, in which infatuation must have prevailed in a more progressive degree, than when a jury are thus, in fact, directed to receive no refutation nor proof of the perjury of the witness, but only of his truth. We will permit you to deny the charge by establishing the fact; we will permit you to prove that they swore falsely to your being there, by producing another witness to prove to a certainty that you were there. [Interrupted by

Lord Clonmell. The reasoning of the court was strong upon that point. This is a transaction stated by the witness to have happened in open day, in a crowded assembly in the capital, amidst a number of persons dressed in the uniform of *Hamilton Rowan*. There has been nothing brought forward to surprise the traverser, yet what has he done? did he offer as in the common course to prove an *alibi*? It is stated to be at such a day, the witness swears at such an hour. The place is sworn to have been full of people, of Mr. Rowan's friends: but if there was even a partial assembly, it would be easy still to produce some one of those persons who were present to say, that the fact did not happen which has been sworn to, or if you say Mr. Rowan was not there, it is easier still to prove it by showing where he was—as thus: I breakfasted with him, I dined with him, I supped with him; he was with me, he was not at Pardon's. Disprove that assertion, by proving an affirmation inconsistent with it.]

Mr. Curran. I beg leave to remind the court of what fell from it. "He may call," said the court, "any of those persons; he has not produced one of them." Upon this, I think, a most material point does hang, "He might have called them; for they were all of his own party."

Lord Clonmell. That is, if there were such persons there; or, if there was no meeting at all, he might have proved that.

Mr. Curran. There was no such idea put to the jury, as whether there was a meeting or not: It was said they were

all of his party, he might have produced them; and the non-production of them was a "volume of evidence" upon that point. No refinement can avoid this conclusion, that even as your lordship states the charge, the fate of the man must depend upon proving the negative.

Until the credit of the witness was established, he could not be called upon to bring any contrary evidence. What does the duty of every counsel dictate to him, if the case is not made out by his adversary or prosecutor? Let it rest; the court is bound to tell the jury so, and the jury are bound to find him not guilty. It is a most unshaken maxim, that *nemo tenetur prodere se ipsum*. And it would be a very inquisitorial exercise of power, to call upon a man to run the risk of confirming the charge, under the penalty of being convicted by *nil dicit*. Surely, at the criminal side of this court, as yet, there has been no such judgment pronounced. It is only when the party stands mute of malice, that such extremes can be resorted to. I never before heard an intimation from any judge to a jury, that bad evidence, liable to any and every exception, ought to receive a sanction from the silence of the party. The substance of the charge was neither more nor less than this, that the falsehood of the evidence shall receive support and credit from the silence of the man accused. With anxiety for the honour and religion of the law, I demand it of you, must not the jury have understood that this silence was evidence to go to them? Is the meaning contained in the expression "a volume of evidence" only insinuation? I do not know that any man would be safe. I do not know what any man could do to screen himself from persecution; I know not how he could be sure even when he was at his prayers before the throne of Heaven, that he was not passing that moment of his life on which he was to be charged with the commission of some crime, to be expiated to society, by the forfeiture of his liberty or his life. I do not know what shall become of the subject, if a jury are to be told, that the silence of the man charged is a "vo-

lume of evidence" that he is guilty of the crime; where is it written? I know there is a place where vulgar phrensy cries out, that the public instrument must be drenched in blood; where defence is gagged, and the devoted wretch must perish. But even there the victim of such tyranny is not made to fill, by voluntary silence, the defects of his accusation; for his tongue is tied, and, therefore, no advantage is taken of him by construction; it cannot be there said, that his not speaking is a volume of evidence to prove his guilt.

But to avoid all misunderstanding, see what is the force of my objection: is it that the charge of the court cannot receive a practicable interpretation, that may not terrify men's minds with ideas such as I have represented? No, I am saying no such thing. I have lived too long, and observed too much, not to know that every word in a phrase is one of the feet upon which it runs, and how the shortening or lengthening of one of those feet will alter the progress or direction of its motion. I am not arguing, that the charge of the court cannot by any possibility be reconciled to the principles of the law; I am agitating a bigger question; I am putting it to the conscience of the court, whether a jury may not have probably collected the same meaning from it, which I have affixed to it, and whether there ought not to have been a volume of explanation, to do away the fatal consequences of such a mistake.

On what sort of a case am I now speaking? On one of that kind, which it is known has been beating the public heart for many months: which, from a single being in society, has scarcely received a cool or tranquil examination. I am making that sort of application, which the expansion of liberal reason and the decay of technical bigotry have made a favoured application.

In earlier times it might have been thought sacrilege to meddle with a verdict once pronounced; since that the true principles of justice have been better understood; so that now, the whole wisdom of the whole court will have an op-

portunity of looking over that verdict, and setting right the mistake which has occasioned it.

Mr. Curran made other observations, either to corroborate his own or to answer the opposite counsel, of which it is impossible to give an exact detail, and concluded thus: You are standing on the scanty isthmus that divides the great ocean of duration; on one side of the past, on the other of the future; a ground, that while you yet hear me, is washed from beneath our feet. Let me remind you, my lord, while your determination is yet in your power, *dum versatur adhuc intra penetralia Veste*, that on that ocean of future you must set your judgment afloat; and future ages will assume the same authority which you have assumed; posterity will feel the same emotions which you have felt, when your little hearts have beaten, and your infant eyes have overflowed, at reading the sad history of the sufferings of a Russel or a Sidney.

[The conclusion of Mr. Curran's speech drew forth loud and repeated plaudits, to the great displeasure of the judges, Sheriff G. &c.]

Mr. Curran was opposed by the Attorney-General, Mr. Frankland, and Mr. Prime Serjeant, each of whom cited many authorities to show, that no one of the grounds taken by the opposite counsel was tenable.

After hearing the arguments of the learned counsel, the court adjourned for the purpose of advising upon the case, until :

FRIDAY, 7th FEB. 1794.

The court met agreeable to adjournment, and having considered and advised of what had been urged by the counsel on either side, overruled the motion for a new trial.

As to the first objection they were of opinion, that it came too late; that permitting the testimony of a witness to be impeached after trial, would be a general invitation to such

perjury as could not be punished by indictment; and that it would be contrary to all former precedents. See 7 Mod. 54. 1 Term Rep. 7. 17. and 2 Term Rep. 1. 13.

The second objection, to a juryman, the court were of opinion was completely removed by the authority of 2 Hawk. P. C. 5. 89.

With respect to the third objection, "Is it in law (asked Lord Clonmell) a ground of challenge that a man conducts, what is considered, a government newspaper?—What is a government newspaper in legal estimation?—*a chimera of the brain!*"—As to that part of the objection to the sheriff, on the ground of his holding a lucrative office at the will of the crown, "the office of sheriff (said his lordship) is under the crown; and if holding an office under the crown disqualify a man, it involves this palpable absurdity, that the very grant which makes him disqualifies him from acting." With regard to Mr. Rowan's affidavit, that the sheriff laboured to return a prejudiced panel, the court decided, that it came too late to be noticed; that it should have been made before the jury were sworn.

Lastly, the court were clear in the opinion, that they had not misdirected the jury in any respect whatever.

Mr. Attorney-General. My lords, it is my duty to apply to the court to pronounce sentence upon the traverser.

Mr. Justice. Boyd, proceeding to pass sentence, animadverted, in very strong terms, on the heinousness of the offence contained in the libel, entitled, "An Address to the Society of United Irishmen." He said, that seduction, calumny, and terror were to be the means of bringing about universal emancipation and representative legislation, and attempts were to be made, by force of arms, to alter the constitution, which were high treason. The sentence of the court is—

Mr. Rowan. My lords, I am perfectly sensible of the forbearance of the court in this trial, and particularly during the arrangement of a long affidavit; I hope, therefore, that I shall be allowed a few words either in mitigation or in

whatever other character I may have a right to address the court before they pronounce their sentence. (Mr. Justice Boyd desired Mr. Rowan to proceed:) I need not apologize, my lords, for any little errors I may fall into, for I am a man unlearned in the forms of these courts, but I shall as plainly and shortly as I can, state every thing as it struck my understanding. My lord, if I understood rightly, the three heads under which this matter has been argued are, the *evidence*, the *jury*, and the *sheriff*; I did hope that the objections taken to these by my counsel, would have set aside the verdict.

There are some parts concerning the *evidence*, in which the court as well as the prosecutor, seem to have been mistaken. They have taken it for granted, that I knew the person who was to give evidence against me; and it was asserted by the bench, that I had ransacked Connaught for evidence against the character of Lyster.* I do not know what impression this might have made upon some of the jury; it was indeed corrected, but it was not sufficiently done away; it is plain it was not, for Mr. Solicitor General, who was present the whole time, whose duty it is, and whose inclination he declared it to be, to listen with attention and deference to every thing which fell from the bench, has since repeated the same assertion. I certainly did suspect, that the person who has now been brought forward, was the man who had lodged the informations against me; but I hoped that my trial had been postponed by the prosecutor, from a knowledge of his character, and a wish to procure more credible testimony, as to the fact of distribution. I had certainly every reason to suppose this had been the case, as I knew that several of my friends, men who belong to the old

* To the credit of the British army it should be mentioned, that when the *informer* Lyster joined his regiment, the officers of the corps were so exceedingly shy, that they actually put the captain "into Coventry!" The consequence was, that he was obliged to sell out, and contrive to enjoy his *honourable* wages in some other capacity.

volunteer corps, and who probably were at that meeting, if there were any such assembly, had been summoned on this trial by the prosecutor. They attended in the court, but were never called upon. I know if the charge exhibited against me by Lyster would have fallen to the ground, I had been certain of an acquittal.

As to the jury, my lord, I can conceive some of them to have been very honourable men, and yet prejudiced, much prejudiced; I did not conceive, however, that any man would have gone into that box, taking an oath to try me impartially, yet having publicly declared an enmity against me. It was certainly very ingenious in one of the crown lawyers to suppose, that the jurors who used those expressions, might have thought at that time, that I had been guilty of murder, or some crime, and had been disabused before the trial came on—but without recurring to my general character, that suggestion, in my opinion, falls to the ground, for the conversation was on the subject of the volunteers; and it is for an address to the volunteers that I am now prosecuted. I certainly did wish for a revival of the volunteers, and I did attempt it; I thought they had already done honour to the nation, that they had been acknowledged honourable by the legislature; this I did attempt, if this be a crime. It has been said by one of my prosecutors, that it was not with the jurors, but with their verdict that I was discontented: I ask, what was my conduct when the verdict was delivered in? Did that prove a discontent to the verdict? No. I thought it a severe one, unfounded in evidence, but I called for the sentence of the court; I was ready to abide by that sentence; and it was not until my return to Newgate, when I found my prison doors crowded with utter strangers to me, each recapitulating instances of declared partiality in the jurors, and further acts of infamy in the evidence, that I had thoughts of setting aside their verdict.

As to the sheriff, and the circumstance of my not having made some application to the court prior to my affidavit of the

day before yesterday, and the question of *when* I became acquainted with his partiality ; the fact is, that it is with the utmost reluctance I now stood forward to accuse a man of what must, in my opinion, render him infamous. I well knew that in every public act of my life since I came to this country, trifling as they were, I had been calumniated by him ; but that was in his province of editor ; he is now become the representative of the executive power—is he not ? I thought the station he now holds would give him some pride, instil some spark of honour into him, and that, relinquishing that conduct and proceedings, calculated to procure a greater sale for his journal, in some corners of the city, he would consider himself bound to return a jury which should be unsuspected. Was it likely that he did not know of these declarations of the jurors ? It is not probable. Before the recognisances were given up, while I was out on bail, the death of a near relation obliged me to go to England, where my attendance was necessary for the arrangement of my private affairs ; I returned, however, at great inconvenience, and some pecuniary loss, to attend this court ; yet, during my absence I was branded by this man as a fugitive ; and here permit me to observe, that your lordship, in your recapitulation of this trial, omitted to mention the motion made by Mr. Blennerhasset, that the examination against me should be forthwith returned. Day after day I attended the court ; the little inquiry I could make, informed me that no such examination had gone up to the jury. I believe it was on the last day of the term, or it was not motion day, or something of that kind, and there was no order of the court made. It had been suggested to me by some of my friends, when notice for this trial was served upon me, that I ought to attempt to put it off ; but what would have been the consequence ? Your lordship has said, that *I had called for*, that *I had provoked this trial*, that *I had complained* it was not brought forward. It is true, I did *call for*, I did *provoke* this trial ; I have *complained* that it was not brought forward. I wished

to be brought to trial, but I did wish also to be tried by an impartial jury, summoned by an impartial man; such I thought the sheriff of that time to be, although I was not one of his acquaintance. The very words your lordship used, show why I did not put off my trial. What would then have been said by that journal* which is perpetually stigmatizing my conduct, and vilifying my private character? It would have repeated, what was said in another country, that I was "an infamous wretch, who had fled from the punishment that awaited me."† But still those friends urged me to put off this trial: The sheriff is your enemy. No—I have called for trial, I will trust to his oath of office; though as editor of a newspaper he has acted thus, yet, when bound by oath "to return panels of persons able and sufficient, and not suspected or procured, and to do justice impartially," (these are the words of the oath of a county sheriff,) I hoped he would rise superior to his editorial capacity, and act with justice. Nay, even in my first affidavit, I did not throw out this imputation:

As to the sub-sheriff, I know him not, but I am informed that the sheriff himself returned the whole panel upon this occasion, contrary to the usual custom, as I am informed:—Why this was so I know not. I cannot dive into the breast of any man: God forbid I should be capable of diving into his. My lord, perhaps what I am going to observe may be improper, but I once thought that *intention constituted guilt*. I thought I heard from the bench, that my intention did not signify.

Lord Clonmell. You have said nothing improper yet, sir; go on; you do not seem to recollect the idea perfectly.

Mr. Rowan. It was not from your lordship.

Mr. Justice Downes. Certainly it is an opinion no judge could hold.

* The Dublin Journal, the leading paper in the pay of government.

† See the Lord Advocate's speech on Muir's trial in Edinburgh.

Mr. Rowan. I have been mistaken then; it was something like it; it struck me so. As to the paper, it has been said to come from a *Society of United Irishmen*. One of my witnesses was asked was he a *United Irishman*? I have heard much of *United Irishmen*, much calumny here and elsewhere; I avow myself to be one; my name has appeared to several of their publications; I glory in the name. On entering that society, I took a test by which I am bound to seek for the emancipation of every class of my fellow citizens, and to procure (by spreading information, for that is the only mode a few men assembled in Back-lane can adopt) a reform in the representation of the people,* a reform, the necessity of which has been allowed even in parliament. These are our objects; objects which I am bound to pursue to their completion. As to the paper, I honour the head that conceived it, and love the hand that penned it. Much stress has been laid upon the words "Universal Emancipation and Representative Legislation;"—it may be owing to a want of logical precision in me, but I do not consider these words as carrying the meaning which has been imputed to them. I did imagine that the British constitution was a representative legislature; that the people were represented by the house of commons; that the lords represented the territory, the property; and that the king represented the strength of the state, the power of the whole, placed in his hands for the benefit of the whole. As a person, as a man, I know nothing of the king; I can know nothing of him, except as wielding the force of the nation, to be exercised for the benefit of the nation; and if ever that force should be misapplied, or abused, it then remains for the people to decide in what hands it ought to be placed.

I really feel myself in an awkward situation, thus declaring

* "It being the interest as well as the intention of the people to have a fair and equal representation, whoever brings it nearest to that is an undoubted friend to government, and cannot miss the approbation of the community."—*Locke on Government*, sect. 158.

my sentiments, seeing intentions different from those both of the author and myself are fixed upon that paper, for the distribution of which I am persecuted. From my situation, however, having an independent fortune, easy in my circumstances, and with a large family, insurrection of any sort would surely be the last thing I could wish for. I ask no favour, but I submit myself to the clemency and the justice of the court, and I trust that whatever may be their sentence, I shall bear it with becoming fortitude.

Lord Clonmell. I have conferred with my brethren upon what has fallen from you, confessedly in mitigation, and with that view. Nothing has fallen from you to affect the minds of the court in mitigation, or change the judgment which we have thought proper should be pronounced upon you. I shall not adopt any idea, or suffer any idea to arise in my mind, from what you last let fall from you, to increase that punishment. The judgment of this court will, therefore, be pronounced, as is the practice in Westminster-Hall, by the second judge of the court; it shall be pronounced by my brother Boyd.

Mr. Justice Boyd. The sentence of the court is, That you, Archibald Hamilton Rowan, do pay to his majesty a fine of five hundred pounds, and be imprisoned for two years, to be computed from the 29th of January, 1794, and until that fine be paid; and to find security for your good behaviour for seven years, yourself in the sum of two thousand pounds, and two securities in one thousand pounds each.

COUNSEL for the crown.—The Attorney-General, Mr. Prime Serjeant, the Solicitor-General, Messrs. Frankland and Ruxton. Agent, Mr. Kemis.

COUNSEL for the defendant.—Messrs. Curran, Fletcher, and the Recorder.

On the night of the 1st of May, Mr. R. effected his escape from prison. He made his way to the coast, where he prevailed upon two fishermen to take him into their boat, and put to sea. After many escapes from the dangers of a voyage in so small a vessel, and of being taken by the English cruisers, he was safely landed in France; from thence he came to America. It is almost needless to mention, that Mr. Rowan's mild and proper conduct in this country was such, that it extorted the approbation even of those who were adverse to his principles.

THE TRIAL

OF THE REVEREND WILLIAM JACKSON, FOR
HIGH TREASON.

ON the 28th of April, 1794, the Rev. Wm. Jackson was arrested and committed to prison, under a warrant issued by Lord Chief Justice Clonmell ; and, on the 23d of June, the grand jury of the county of the city of Dublin found an indictment against him for high treason, of which the following is an abstract :—

First count. That Wm. Jackson, clerk, on the 3d day of April, 1794, being a false traitor, did compass and imagine the death of the king, and did traitorously and feloniously intend the said king to kill, murder, and put to death.—*Overt Act.* That he did come to Ireland for the purpose of procuring information as to the state of the government, and the dispositions of the people ; which information he did attempt to transmit to persons exercising the powers of government in France, (with whom his majesty the king was then at war,) in order to enable the French to effect an invasion of Ireland.

Second count. That the said Wm. Jackson being a false traitor, did consult and conspire with divers others to levy and make insurrection, rebellion, and war.—*Overt Acts.* 1st. That he did excite the persons exercising the powers of government in France to levy war within Ireland—and twelve other overt acts of the same nature.

Third count. That the said Wm. Jackson unlawfully and traitorously was adhering, aiding, and comforting the persons exercising the powers of government in France, then being the enemies of the king. The *overt acts* laid in this count were the same as those in the next preceding one.

THURSDAY, 23d April, 1794.

At half past ten the court sat, consisting of Earl Clonmell, Chief Justice; Mr. Justice Downes, and Mr. Justice Chamberlaine—Mr. Justice Boyd being absent.

The Rev. William Jackson was brought from Newgate, escorted by an officer's guard, (which continued in the hall during the trial, and prevented the crowd from pressing into the court,) and was put to the bar. The prisoner having declared himself ready for trial, the jury were called, elected, tried, and sworn. The case was opened by

Mr. Attorney-General. My lords, and gentlemen of the jury. The prisoner, the Rev. William Jackson, a clergyman of the church of Ireland, and a native of this kingdom, stands charged with high treason. He is charged with two species of that crime. One, that he compassed and imagined the death of the king; the other that he adhered to the king's enemies, namely, the persons exercising the powers of government in France, with which nation the king was at war at the time the fact was alleged to have been committed. The court will inform you that this indictment is grounded on the statute of Edward III. By that statute, confirming the common law, to imagine, design, or compass the death of the king, is made high treason; the only instance where a crime intended, and not committed, is made punishable with death, because as there is something so essential to society in the chief magistrate, (the king,) that the compassing his death is guarded against in this peculiar way, because the peace and safety of society depends, in a great measure, upon his single life.

But, while the law has thus wisely guarded against violence offered to the chief magistrate of the state, it has taken care that those who shall be charged with any intention of that kind shall not be easily or lightly found guilty; and, as the *intention* of the guilty person can only be known to himself and to the eye of providence, it is necessary, before he can be convicted of that horrid crime, that he should have mani-

fested it by some overt act, openly done, and fairly proved, which shall make that intention plain and clear to the jury, who are to pronounce their verdict upon him. Upon this species of treason, I am to observe, what the court will also inform you of, that, to constitute the crime, it is not necessary that the party actually had an intention the king to put to death.

[Here Mr. Curran apologized for interrupting Mr. Attorney-General with a request that the witnesses for the crown might be sent out of court, which was readily complied with, as well by the crown officers as by the court; and a list of witnesses was desired on both sides, that they might be placed out of the hearing of the statement; but nothing more was insisted upon than that Mr. Cockayne, the principal witness for the prosecution, should withdraw.]

Mr. Attorney-General proceeded. Gentlemen, I was endeavouring to explain the charge in the first part of the indictment, that of compassing the death of the king. It is not necessary that the person accused intended to put the king actually to death; but if any thing which might in its consequences produce that effect, he is guilty of the crime charged upon him. Thus, if he meant to dethrone the king, it is settled law, that that would be of itself a compassing of his death; for, to dethrone a king, immediately leads to the last act of violence. Another similar instance is, that the party having an intention to imprison the king, although it does not appear that he intended to put him to death, yet he is guilty by the law of compassing his death; for such an act is the immediate forerunner of the death of a king. Therefore, gentlemen, it is for you to consider when you shall hear the evidence, what the scope and design of the prisoner was.

He stands charged, in the first instance, with an intention of compassing the king's death; to support that charge there are fourteen overt acts laid; if any one of which is proved to your satisfaction, and is in its nature such as discovers to you this traitorous intention, then you will find the prisoner guilty. I shall not take up your time with enumerating the

several overt acts that are laid in the indictment; the principal one is, that the prisoner consulted with several others, to induce the governing powers of France to invade this kingdom, for the purpose of dethroning the king: the prisoner meeting, together with others, in such consultation, is an overt act, from which you will necessarily collect the preconceived intention of dethroning the king, which in law amounts to a compassing of his death.

Another act is, that the prisoner procured a statement of the kingdom of Ireland to be drawn up, and did put that into the post-office, to be sent into the kingdom of France, with a view of inducing the rulers of the French to invade this country, for the purpose of dethroning the king.

A further act is, that the prisoner endeavoured to persuade a certain person, named in the indictment, to go to France with intelligence, to persuade the ruling powers to make an invasion, in order to dethrone the king.

Apothet, is, that another person was endeavoured to be persuaded to go into France, to induce the enemy to make such an attempt.

It is also laid, that the prisoner came into this kingdom for the purpose of exciting a rebellion. That also is an overt act, which manifests the intention; and there are various others of a similar nature, particularly specified on the face of the indictment, if any one of which is proved to your satisfaction, then it will appear that the prisoner did incur the guilt of compassing the king's death.

The other species of treason is, that of adhering to the king's enemies; that species of treason is clearly expressed by the very term itself; but an overt act of that kind must also be laid, and, therefore, fourteen are laid to support that, the same as those which are laid to support the other charge: for, gentlemen of the jury, it needs no argument to prove, that if a man invites an enemy, he adheres to that enemy; and if he gives that enemy intelligence, he adheres to him. It is needless to go over the fourteen overt acts to satisfy you

of this ; for if any one of them be proved, you cannot doubt that the party has manifested a clear determined adherence to the king's enemies.

Such are the crimes charged against the prisoner at the bar ; whether he be guilty of either of these crimes, it is for you to determine upon your oaths. You are, on the one hand, to discharge your duty to your king and to your country, and you are to take care upon the evidence, that if the party is proved guilty, he shall be found guilty ; in order that men may be deterred from committing crimes of the last malignity, tending to the destruction of the state, the peace, happiness, lives, and properties of the subject. It is your duty to take care, that by no weak feelings, by no improper leanings to mistaken mercy, a man guilty of such a crime should escape from justice. At the same time you have another duty ; and, however you may conceive of the treason, however dreadful the consequences of such a trial may be, you are not to be hurried away in consequence of your feelings, lightly to find the accused guilty. These are observations, not necessary perhaps to such men as you ; but in making which I conceive myself as merely discharging a duty.

EVIDENCE ON BEHALF OF THE CROWN.

Mr. Cockayne. This deponent stated, that he resided in Lyon's Inn, London, as an attorney ; that he had known the Rev. Wm. Jackson, who is a native of Ireland, these ten years and upwards ; that he went to France upon the Duchess of Kingston's business, and resided there two or three years ; that he returned in January or February, 1794, and lodged at the Buffalo Tavern, Bloomsbury, London. This deponent had constant intercourse with him ; but what he was engaged in during his residence in England, or what brought him back from France, he cannot particularly state ; that he has done some private business for him in the capacity of his

friend and attorney. Mr. Jackson left London for Dublin in the latter end of March, and this deponent was induced to accompany him, in order to counteract those schemes which he thought he had "of providing the French with prohibited articles," i. e. provisions, &c. The reason of this deponent for thinking he had such schemes in his mind, was some conversations he had with him in England, but cannot mention the purport of any one with precision. This deponent left his business in England "to be a spy upon his friend and client for the ordinary reward he would get for any common business!" remuneration to that amount he expected to obtain; but he did not consider he ever had any promise of reward from Mr. Pitt. This deponent and Mr. Jackson travelled together, and arrived in Dublin on the 3d of April, and lodged at Hyde's: he himself applied to Mr. McNally on business, and they were shortly after invited to dine with him, and met there Mr. Simon Butler. At dinner there was some common conversation, but at last politics were introduced, when the discourse related to the dissatisfaction of Ireland, "but it was impossible to recollect conversations that passed among three or four people at a time they were all drunk."

This deponent was present at a conversation at Hyde's Coffee House, the subject of which was, Mr. Lewyn's asking Mr. Jackson for some written documents, which he might produce as authorities to Mr. Rowan, who was at that time imprisoned in Newgate, so that he might with confidence talk to Mr. Jackson—that Mr. Jackson gave some papers to Mr. Lewyn, and soon after, Mr. Jackson and Mr. Rowan had an interview; after which, this deponent, with Mr. Jackson, went to see Mr. Rowan; found Mr. Tone there; the business of the meeting was about politics, Irish affairs. A great deal was said of the *United Irishmen*; some pamphlets were read; some other matters were talked of, such as the dissatisfaction of part of the kingdom. This deponent perceived that a paper was read by Mr. Tone and Mr. Rowan

to Mr. Jackson, but not so loud as that he (this deponent) could understand it.

Question by Mr. Attorney-General. "What conversations passed at that meeting where Mr. Tone was?"—(Witness hesitated)—"I do not mean to ask particularly as to the conversation of an individual; I wish you to understand me."—(Witness hesitated.)—Answer.—"The conversation amongst the three was, forming a plan, and talking of a plan to send somebody to France."

This deponent further states, that those three persons had a long conversation in a corner of the room, but he could not "pick out enough of it" to enable him to understand what it was—that he recollects to have heard it proposed at another time, that Mr. Tone should go over to France, to which he at one time seemed to assent, but then receded, and gave his reasons, but what they were this deponent does not now recollect. [*Here the witness hesitated a good deal, and complained of want of recollection.*—This deponent said, that his recollection had been much shattered by this transaction; that it hurt his mind more than he could say, to see *that gentleman in that situation.*

This deponent then proved the hand-writing of Mr. Jackson on the letters marked No. 1, 2, 3, 5, 6. and also proved the letter marked No. 7. to Horne Tooke from Stone—and that the letters marked No. 1, 2, 5, and 6. were taken by him to the post-office, by the direction of Mr. Jackson—but at the time he put them in the office, he knew they could not go to foreign parts, or to the king's enemies, because he had taken measures to have them intercepted, of which Mr. Jackson knew nothing.

This deponent stated, *that he came forward reluctantly, to give evidence against a man with whom he had lived in intimacy*—that he was examined before at the castle;—that the testimony given in on his examination there, was not so full as would have been wished;—that when under examination, "he very much hesitated to sign it; and declined it as much

as in his power, for he was unhappy at the thought of it; that the lord chief justice said, that he should know he was in his power as to committing him, if he did not swear!"

Chief Justice. "Recollect yourself"

Question by Mr. Curran. "What was said to you, touching the power of committing you?"—Answer—"I hesitated in signing the examinations, which, after they were sworn at the privy council, my lord chief justice was obliging enough to alter very much to the way in which I wished to sign them; I was pressed very much by the privy council—I believed his lordship's patience was exhausted, and he said, "do not you know that you are in my power?"

This deponent also stated, that his examinations, although taken at the castle, were not signed until two or three days afterwards at the house of Lord Clonmell—that he was solely actuated to counteract the schemes of Mr. Jackson, and to apply to government, by his having taken the oath of allegiance *three times*—that he first applied to Mr. Pitt, and told him that a person of the name of Jackson was coming over to Ireland for such purposes; that he owed him the sum of three hundred pounds, and that he should think it hard if he lost it—to which Mr. Pitt answered, "that this deponent should be no loser."

This deponent further states, that he obtained a pardon for treasons committed by himself here, but not for a conviction of perjury—that he was once "lugged before a court of justice," on a charge of perjury, for swearing in an affidavit that he was at a certain place from 6 until 7 o'clock, which was a falsehood, but "the court seeing there could be no advantage to this deponent or his client, acquitted him *honourably*."

Question by a juror, Mr. Cowan. "Your sole motive was to counteract Mr. Jackson; how has it happened that you gave so poor an account of many of the transactions, seeing that you came for the purpose of giving evidence for government?" Answer—"I gave government as much intelligence as I

could ; but did not expect to be called on as a witness on a trial."

Mr. Dejancourt deposed, that he held a place in the post-office ; that he found the letters marked, No. 3, 5, and 6, in the post-office on the night of the 24th of April, 1794 ; that he intercepted them in consequence of having received previous orders from government, to pay attention to letters of that description, and that he had handed them over to Mr. Hamilton.

Mr. Carleton deposed, that he had been employed to arrest Mr. Jackson, and did so on the 28th of April ;—that he found him abed in his room at Hyde's Coffee House ; that some papers were on the table, among which were number 5, and 6. ; others were found in his trunk and pocket-book.

Mr. Mounsey, from London, proved an office-copy of an indictment, and of an acquittal for the perjury mentioned by Cockayne.

[Here the intercepted letters were read and produced to the Jury. The following, No. 5. we think most material and worthy of insertion:]

"The situation of England and Ireland is fundamentally different in this : The government of England is national, that of Ireland provincial. The interest of the first is the same with that of the people—of the last directly opposite. The people of Ireland are divided into three sects : the *established church*, the *dissenters*, and the *catholics*. The first, infinitely the smallest portion, have engrossed, besides the church patronage, all the profits and honours of the country exclusively, and a very great share of the landed property. They are of course aristocrats, adverse to any change, and decided enemies to the French revolution. The dissenters, who are more numerous, are the most enlightened body of the nation, they are steady republicans, devoted to liberty, and, through all the stages of the French revolution, have been enthusiastically attached to it. The catholics, the great body of the people, are in the lowest degree of ignorance, and are

ready for any change, because no change can make them worse. The whole peasantry of Ireland, the most oppressed and wretched in Europe, may be said to be catholic. They have within these two years received a certain degree of information, and manifested a proportionate discontent by various insurrections, &c. They are a bold, hardy race, and make excellent soldiers. There is nowhere a higher spirit of aristocracy than in all the privileged orders, the clergy and gentry, of Ireland, down to the very lowest; to counter-vail which, there appears now a spirit rising in the people which never existed before, but which is spreading most rapidly, as appears by the defenders, as they are called, and other insurgents. If the people of Ireland be 4,500,000, as it seems probable they are, the established church may be reckoned at 450,000, the dissenters at 900,000, the catholics at 3,150,000. The prejudices in England are adverse to the French nation under whatever form of government. It seems idle to suppose the present rancour against the French is owing merely to their being republicans; it has been cherished by the manners of four centuries, and aggravated by continual wars. It is morally certain, that any invasion of England would unite all ranks in opposition to the invaders. In Ireland, a conquered, oppressed, insulted country, the name of England and her power is universally odious, save with those who have an interest in maintaining it; a body, however, only formidable from situation and property, but which the first convulsion would level in the dust; on the contrary, the great bulk of the people of Ireland would be ready to throw off the yoke in this country, if they saw any force sufficiently strong to resort to for defence, until arrangements could be made.

“The dissenters are enemies to the English power from reason and reflection, the catholics from a hatred of the English name: in a word, the prejudices of one country are directly adverse, of the other directly favourable, to an invasion. The government of Ireland is only to be looked upon

as a government of force ; the moment a superior force appears, it would tumble at once, as being founded neither in the interests nor in the affections of the people. It may be said the people of Ireland show no political exertion. In the first place, public spirit is depressed by the many recent persecutions. The convention act, gunpowder bill, &c. &c. Declarations of government, parliamentary unanimity, or declarations of grand juries, all proceeding from aristocrats, whose interest is adverse to that of the people, and who think such conduct necessary for their security, are no obstacles; the weight of such men falls in the general welfare, and their own tenantry and dependents would desert and turn against them ; the people have no way of expressing their discontent *civiliter*, which is at the same time greatly aggravated by those measures, and they are on the other hand in that semi-barbarous state which is, of all others, the best adapted for making war. The spirit of Ireland cannot be calculated from newspaper publications, county meetings, &c. at which the gentry only meet and speak for themselves. They are so situated, that they have but one way left to make their sentiments known, and that is by war. The church establishment and tithes are very severe grievances, and have been the cause of numberless local insurrections ; in a word, from reason, reflection, interest, prejudice, the spirit of change, the misery of the great bulk of the nation, and above all, the hatred of the English name, resulting from the tyranny of near seven centuries, there seems little doubt but an invasion in sufficient force would be supported by the people. There is scarce any army in the country, and the militia, the bulk of whom are catholics, would, to a moral certainty, refuse to act if they saw such a force as they could look to for support.”*

[Here the evidence on the part of the crown closed.]

* The reader may consider this letter as containing a tolerably correct description of Ireland, (setting aside the motives of the writer,) both as to

MR. CURRAN. My lords, and gentlemen of the jury. I am sure the attention of the court must be a good deal fatigued, and I am sure, gentlemen of the jury, that your minds must be of necessity fatigued. Whether counsel are fatigued or not is a matter of very little worth.

It is not necessary for me to add to the labour either of the court or of the jury. Of the court I must have some knowledge, of the jury I certainly am not ignorant. I know it is as unnecessary for me to say much (perhaps any thing) to inform the court, as it would be ridiculous, should I affect to lecture a jury of the description that I now address.

I know I am addressing a court anxious to expound, with impartiality, the law of the country without any regard to the consequences in point of fact, or to the end and policy of any individual prosecution. In the jury I am looking to, I know that I am addressing twelve respectable and sensible men of my country, who are as conscious as I can be of the great obligation to which they have pledged themselves: namely, to decide fairly between the king and the person accused, without listening to passion, being swayed by prejudice, or suffering their thoughts to be occupied by any consideration, except the weightiness of the charge, and the evidence sworn in support of it. I am speaking to a jury who know as well as I do,

the number and disposition of the parties. Not many years ago, Mr. Bush, the commissioner, estimated, from the hearth-money books, the inhabitants of Ireland at above four millions. One material alteration, however, has lately taken place, namely, the opinions of the French revolution "in all its stages." The dissenters of Ireland (who form the most industrious and the most enlightened portion of the community) do NOT approve of the French revolution "in all its stages." Like a great majority of the people of the three kingdoms, indeed of all Europe, they applauded the first dawnings of that reformation; but the atrocious acts of the French mob, and the crimes of their rapacious unprincipled leaders, have disgusted all good men. The French, instead of accelerating the cause of rational liberty, have retarded its progress in Europe, perhaps for ages. "*O liberty*," (exclaimed that illustrious female victim of jacobin fury, M. Roland,) "*O liberty, what horrible crimes are committed in thy name!*"

that the great object of their duty is to protect the individual who is committed with the crown, against all accusation which is not founded in truth. They will remember, I know they will remember, that the great object of their duty is, "to come (according to the words of a late venerated judge in another country) with minds like white paper, upon which prejudice, passion, or calumny, hope, interest, or fear, have made no stain or blot;" and that they come into the box standing indifferent as they stood before sworn.

Gentlemen, in the little, and it shall not be much, that I shall take the liberty of saying to you, I shall not push any argument beyond its intrinsic weight. If I have a bad cause, I shall not endeavour to deck it out in colours, or disguise it by concealment. My objections shall be addressed to your reason. I shall not pretend to you that they are of the most glaring and unanswerable nature. If they have not some weight in themselves, it is not a great promise from me that could give them any anticipated sufficiency.

You are empannelled to try a charge. The first question then is, what is that charge? The prisoner is indicted upon two several branches of that statute which inflicts the pains and penalties of high treason upon two offences which is particularly described. By that statute, if any man should compass or imagine the king's death, he is guilty of the crime. The nature of the offence, if it required any comment upon it, has been learnedly, and candidly, and justly commented upon, by Mr. Attorney-General in his statement of the case.

The second part of the charge is, that he did adhere to the king's enemies. By the law of this country, there are rules peculiarly applicable to cases of high treason, contradistinguished from all other branches of the criminal law. The nature of the offence called for this peculiarity. There is no species of charge to which the innocent man may be with more probability made the object, perhaps the victim of accusation, than offences against the state. There is a natural and laudable leaning attached to the honest feelings

of every man who respects that law which secures the property and person of himself and his countrymen, which feeling is wont to warm and alarm the passions, at times perhaps too strongly, against the man suspected of an infringement upon that security. It was therefore to guard the subject against the most dangerous abuse, the abuse of a virtue, that this act of parliament was made so favourable to the subject, inasmuch as it defines strictly and with precision, the offence by which, and by which alone, he shall suffer death.

Gentlemen, there is no charge which the baseness of the venal informer can with more hopes of success affix upon this or the other man, than that he is an enemy to the public peace. There is no case where malice can have any better hope of finding gratification, or greater expectation of reward, or fuller compensation for its turpitude, than pursuing such an accusation as the present. It was thought necessary for these reasons, to prevent the accused from being made a sacrifice to the indignant feelings of a jury, or the prompt and keen audacity of the hireling informer. How has the legislature done this? By pointing out in unequivocating terms, those rules which shall be restrictive on a court and on a jury. The man must be pronounced a traitor if he commits the crime, but it must be a crime of which he shall be fairly and publicly convicted; an overt act such as the law has designated to be treason, and by such evidence as the law has made sufficient to substantiate that overt act. And in order to give an opportunity for such a defence, the leading facts or classes of treason of which he has been accused, shall be stated of record in the very body of the indictment. Therefore, justly did I hear it observed, that there could never be devised, by human wisdom, a mode of trial more fair, more merciful, than this.

I have stated to you the foundation of the law as it stands in this country, touching the mode of accusation and trial. I have to add, that in Great Britain it has been found right still further to add to those sanctions, alike created to protect the

consciences of the jury, and the safety of the prisoner, by an express statute, enacted in the reign of William III. and it is now settled in that country, that no man shall be indicted or convicted for high treason, unless upon the evidence of *two* competent witnesses; and the statute describes what sort of evidence that shall be:—either two witnesses swearing directly to the same overt act, or else one to one act, and one to another; but in this latter case, the two several facts must not be distinct in their nature, but must be of the very same species of treason. So that to every separate class of treason of which a man is accused, there must be at least two credible witnesses produced, otherwise the man cannot, by the law, and consequently ought not by the jury, to be convicted. In England, no man can at this day be found guilty, except upon the concurring testimony of two witnesses, credible in their persons, and concurrent in supporting the allegation of one integral and substantive class of treason.

I state it to you, gentlemen, what is now the settled law of the neighbouring kingdom; and I state it to you emphatically to be the settled law of that country; because, far am I from thinking that we have not the blessings in this country of living under the same protecting sanction of the law; far am I from imagining that the breath which in England cannot so much as taint the character of the accused, shall, because he is in Ireland, blow him from the earth. That he who in Great Britain would laugh at his accusers, must, because he is to be tried in *this* country, perish under their accusation. And sure I am, that in a country where we have had few, if any, instances of prosecutions for the species of crime to be adduced as authorities against the accused, the justice of the court, not merely its humanity, will give the fullest effect to any argument which tends to show, that the law which takes away the life of man, and which should ever be wise, and therefore uniform, is in England and Ireland one and the same.

Chief Justice. You mean to argue, then, that the statute of William III. is in force in this kingdom?

Answer. I mean to argue, my lord, that the necessity of *two* witnesses, in any case of treason, is as strong in Ireland as it can be in Great Britain. It is the opinion of my Lord Coke, founded upon a number of authorities. It is an opinion of Lord Coke, referring to judicial confirmations of established weight, which I conceive not at all shaken by an *obiter* assertion of Justice Foster, nor by any thing to be found in the works of Sir John Hawkins, or any other crown lawyer. It is laid down by Lord Coke that, by the common law of England, *two* witnesses were necessary.* One witness was not sufficient to convict any person of high treason, for, where there is but one witness, says he, it shall be tried by the constable and marshal, not at common law.

I consider the statutes of Edward VI. as well as that of King William III. to have become necessary, from the abuse that had arisen in the exercise and practice of the common law. After the statute of Edward VI. which did declare the necessity of two witnesses, had fallen into disuse, by a gradual departure of the judges from that statute, and before the enactment of that of William, so far had a constructive departure taken place, that the statute was said to have been complied with by one witness as to the fact, and another swearing as to hearsay; it became necessary, not by a new-fangled law, but by a declaration of the great principle of justice, and the common law, to re-enact the principle, and put an end to the abuse of the common law, by saying, that no man could be lawfully indicted or convicted without *two* witnesses, as I have stated. And there seems to be a sound distinction between this and every other crime, for it is the only crime that any subject is specifically sworn not to commit; it is the only offence that a subject takes an oath to ab-

* See 3 Inst. 96. Mr. Grattan endeavoured to obtain this law for his country, but the British minister said, "it was not fit for Ireland."

stain from ; every other offence is left to be controlled, in the first instance, either by the conscience or feelings of a man : but he is sworn not to swerve from his allegiance to the king. So that, in this, it exactly resembles the case of perjury, where no man is convicted by a single witness ; and why ? Because it would be but setting oath against oath ; whereas, until the credit of a party is impeached, the oath of one man is of as much avail as that of another. So, in case of a man indicted for high treason, there is, on one hand, an oath of allegiance of the party ; on the other, there is a criminating oath of the accuser ; so that, I believe Lord Coke was well warranted in saying, that this was a rule deduced from general justice, and even from the law of God himself.

Hitherto, gentlemen, I have been (as far as respects this point) stating the matter of law, which I have offered to the court. But the next question is for your consideration solely : namely, the credit which the witnesses deserve. See, then, what these witnesses have been. In all cases, of every description, the witnesses should be unexceptionable in their credit ; and the law respecting every species of criminal charge is, that no man shall be found guilty of any offence, but by the testimony of *one credible* witness.

Gentlemen of the jury, I have submitted my humble idea of the law, and the charge which Mr. Jackson has been called to answer. The overt acts necessary to be proved are these :

1st. "That he did traitorously come to and land in Ireland, for the purpose of procuring and attaining information, and accounts of and concerning the situation and dispositions of the subjects of our said lord the king, in his kingdom of Ireland, and of sending, and causing to be sent, such information and accounts to persons exercising the powers of government in France.

[Here Mr. Curran read the 2d, 3d, 4th, and 5th overt acts.]

Gentlemen, I have stated five overt acts, You will be

pleased to recollect the evidence given by Cockayne, in which he did not presume, or pretend to say, that Jackson came to the kingdom of Ireland for any such purposes as are stated in the indictment. As to the four naked acts, I have only one observation to press upon you, which is, to beseech you not to confound with the evidence that statement which it was necessary for the learned counsel to make, in pursuance of the instructions he had received. Mr. Cockayne met Mr. McNally—he had known him in England—Mr. Jackson, the clergyman, had known him also. He had some private professional business with him. Mr. McNally entertains him—he met several persons—they talked of politics—they talked of Ireland—he did not pretend to give any account of any specific subject of conversation—not one tittle of any act of conspiracy, such as is charged to him. He went to Newgate—Mr. Rowan was in confinement there—he sometimes met Jackson; sometimes Mr. Tone. And what passed there? Was it to excite any person to make a descent upon this country? Let me remind you, gentlemen, that it is not what a learned counsel may have been instructed to state, but what a witness may have sworn, that is to be the ground of your decision. And what has this witness sworn? He did not hear the conversation!—He heard part of it!—Gentlemen, will you make any man answerable with his life for a part of a conversation of which the witness tells you he could hear but a scrap, without adverting to the qualification which might be afforded by that part which he says he did not hear? I mean you should take it as he stated it, high as he was wrought up, and forged on, by the examination. He heard a talk of somebody going to France, to carry some paper to Paris, he knew not what!—He talked of a paper of instructions to the French; but what instructions he knew not! it might be to the manufacturers, it might be to the royalists, or to any other men in France; it might be to the friends of the King of Great Britain. Not that I mean to say, there is not something suspicious that

might excite some doubts or alarms, in having three or four men meeting in Newgate, huddling themselves together in a corner, and talking of going to a country with which we were then at war?—Do I mean that there is nothing suspicious in this?—No; I am not reasoning so at all. But I am reasoning thus, and I think soundly too: That it is not for you to say, by your verdict, whether an act is or is not suspicious, or may or may not be explained into any crime. Let me remind you, that your verdict is not to establish guilt because it is possible, or more than possible; but that the man is accused, and must be acquitted, unless, upon a certainty, and not vague conjectures, you are forced by the strength of evidence to pronounce that he has merited his death.

I feel that your verdict will be founded upon nothing less than that resistless testimony, and upon those unalienable principles of law and justice, on which it should be founded.

But what was the fact attempted to be proved? It was to go to France to carry a paper. I know that this of itself is a crime. To go into France to do any legal act (and no other this witness has proved) is a crime, subjecting the party to six months' imprisonment, or something not exceeding that. But this is the first time I ever heard it contended for, that the encouragement of a person to go there for any purpose of that kind was a crime, much more high treason. For what purpose he was to go the witness has not sworn. Yet you are to say upon your oaths that it was to invite the enemy by force to effect the subversion of this government. Has the prosecutor sworn any thing like that? I think not.

The next overt act charged is: "That he did compose and write a letter to Mr. William Stone, of London; and in that he did instruct the said William Stone to reveal and disclose to the said persons exercising the powers of government in France, and to the people in France, enemies to the king, a scheme of the said William Jackson, and other traitors," &c.

Gentlemen of the jury, you have heard these letters read; you must of necessity look upon them in one or two important and distinct points of view. The first question to be asked is, What are those letters? If all the other charges were true, do they sustain the allegation laid? Are they letters requiring Stone to inform the convention of such a state of this country? Are they such as would invite them to form the plan of an invasion of this country? I know not in what state the property, much more the life of any man can be, if they are always to be at the mercy, and depend upon the possibility of the accuser's explaining into guilt, the real or pretended circumstances under which he has happened to hold a correspondence at home or abroad. The letters are written apparently upon mercantile subjects. The writer talks of manufactures, of a family lawsuit; of the price of articles being changed; and in another letter, of differences between families; of overtures to agreement, and disputes to be explained by some common moderator.

What is the evidence upon which you can be warranted in saying "manufactures means treason? Mr. Nicholas means France? Your sister-in-law the kingdom of Ireland?" and such like strained and affected inferences. "Danton has been guillotined, but, however, that makes no difference at all in the firm of the house." The "change of fashions, of manufactures, and prices," stand for every thing else that may be necessary; and thus the treason is made out, and waits for nothing but your verdict to ratify and confirm it!

Gentlemen of the jury, give me leave to say that the most cruel and barbarous consequence would follow, from letting in such evidence; that the idlest correspondence might be strained to any construction; and for that which men had written in the moment of harmless gayety, they might be obliged to pay the forfeit of their lives.

But I say, the simplicity and excellence of our law is this—That a man's guilt shall be proved, and not supposed; and it must not be such a proof as is to be elicited by a judge,

and depending upon nothing but the recollection or fantastical discretion of the witness, or the credulity of the jury who are to try the cause.

This letter appears upon the face of it to be a letter of business concerning family differences. It was only necessary that the parties should be understood to each other. But be that as it may, it would be better, surely, and more consonant to the mild spirit of our laws, to let twenty escape, who may even have had a criminal purpose in writing letters of this kind, than run the risk of the hard precedent which you would establish, if without any evidence you should make the life and character of men fall victims to evidence of this kind, unsupported by any thing that ought to give rational conviction to an intelligent mind.

I do not think it necessary to state minutely the rest of these allegations. The next overt act charged is, a conspiracy and traitorous confederation. I shall now consider, gentlemen, the evidence by which that charge is supported, which will be the shortest and clearest way of calling your attention. It is supported either by the positive swearing of Cockayne, as to these facts, or by the written evidence, which also turns upon the swearing of Cockayne.

Touching actual conspiracy, he does not venture to swear that he ever heard any conversation that bore any distinct meaning of that sort. Somebody was to go to France; he did not know for what. He had ideas in his mind, but never from any direct communication. There have been other letters read in evidence, said to have contained duplicates of a sort of representation of the state or supposed state of Ireland. Cockayne says, that he got the packet from Jackson; that he wrote the directions. One of them was, I think, directed to some person in Hamburgh; another to some person resident in Amsterdam; these papers were read; they contained assertions, whether true or false, I do not think material—I think the materiality is in their falsehood—I think the statements in that paper are utterly false. I be-

lieve it is known to every man in Ireland, that this country is not in a state that could induce any expectations, or hold out any hopes to the most adventurous and wicked folly, to try the experiment of a descent upon it.

Gentlemen of the jury, there is a thing more material for your consideration : A paper is stated by the indictment to have been sent for the purpose of exciting and persuading the persons exercising the powers of government in France to try the fate of a descent on Ireland, holding out encouragement and drawing such a picture as to induce them to make so foolish a trial. Have you evidence to support that charge ? You have heard that paper read. Suppose it is Mr. Jackson's opinion which he was writing to his correspondent. It may be a foolish opinion, but that is nothing extraordinary.

Have you ever heard six men to speak upon such subjects, and all to agree ? Can you conceive it an unnatural thing for a man to form an absurd opinion—a man unacquainted with the affairs of Ireland, to suppose that twelve men might make a successful descent ? Mr. Jackson was abroad ; he was a traveller ; he was a literary man, in the habits of corresponding. Is it likely, that a letter written by him to a man living in a country in actual hostility with France, and in the closest alliance with this country—did it follow that a letter must have been written with a view to invite the government of a distant country to make a descent on that in which he was ?

But, gentlemen, let me be understood : It is not as a thing impossible that I am arguing thus. No ; but because a man's guilt or innocence may be truly or falsely alleged in evidence ; it is a letter that the most innocent man might write, or the most guilty man might write ; but if it stands in equal scales merely ; nay more, if the scale of guilt does not greatly preponderate, so as to leave no doubt whatever, he is entitled to your verdict of acquittal. Two letters have also been read, and although it was not expressly said, yet, I own, gentlemen of the jury, I could not persuade myself that there is not a little too much emphasis laid

on names which I have read in newspapers, but to which I am a stranger. I have read in the papers of the name of Laignelot in the debates of the convention—I have read that Mr. Horne Tooke was tried in another country and acquitted—I have heard of another person of the name of Stone being in confinement in England—and of another person mentioned being in Italy. You are to draw no conclusion from such circumstances. There may be fifty persons of such names. It is the guilt of the man, and not the sound of names, by which his fate is to be governed.

What writings have been read? One paper containing, or seeming to contain, the forms of addresses—one to Mr. Stone, one to a Mr. Beresford, &c.

Gentlemen, I have stated the material part of the evidence. I have endeavoured to submit my poor ideas of the rules of evidence by which you ought to be guided, and the rules of law as it humbly strikes me, which ought to govern you in the discharge of the great duty you are now performing. I see now only one remaining topic on which to trouble you.

It appears to me of the utmost importance, that you should consider who is the man that has been examined to support this charge. *One single witness!* Have that engraven upon your minds: The chain, in all its parts, can hang only on the evidence of Mr. Cockayne. There is no other witness of any conversation. There is not a material letter that has been read in this cause, that does not stand upon the evidence of Mr. Cockayne; and that I am warranted in this assertion, you will see to demonstration, when I remind the court, that Cockayne is the only evidence that has been called, as I recollect, to prove the hand-writing of Jackson, the prisoner. He is the only witness that has been called to prove any circumstance, by which these letters, in a criminal view, can affect the person of the prisoner. He was the only man upon whose evidence must rest, either the fact of their being written by Jackson, or the innuendoes imputed to them, for the purpose for which you, the jury, are to believe that they were sent.

Gentlemen of the jury, I am scarcely justified in having trespassed so long. It is a narrow case—it is the case of a man charged with the most penal offence—and by whom? By one witness: *And who is he?* A man, stating to you that he comes from another country, provided with a pardon for treasons committed, not in Great Britain, but in this kingdom, here, of Ireland! Have you ever been upon a jury before? Did you ever hear of a man's sacrificing his life to the law of the country, upon the testimony of a single witness, and that witness, by his own confession, an accomplice in the crime? Why is character made the subject of inquiry? Take his own *vivæ* evidence for his character: he was the traitor to his client. What think you of his character? He was the spy that hovered round his friend, snuffed his blood, and coveted the price that was to be given for shedding it! He was the man that yielded to the tie of three oaths of allegiance, to watch, and be the setter of his client! to earn the bribe of government—secure, with his pardon already in his pocket! He was to put letters in the post-office—to do what he stated himself pressed upon his mind, the conviction that he was liable to the penalties of treason; and this very act did he do, from the obligation of three oaths of allegiance! Was he aware of his crime? His pardon tells it. Was he aware of the turpitude of his character? Yes—he brought a witness to support it; knowing that it was a bad character, he comes provided with the antidote! And he does not himself deny, that although a jury did not think that his act deserved to be punished as a flagrant perjury, yet he had gone the *moderate length* to swear the thing that was not true! This, gentlemen, was one step, at least, towards that profligacy he has since attained. Is it a man of that kind—his pardon in his pocket, his bribe not yet within his pocket, until you, by your verdict, shall say he is worthy of it—is it such a man, whose evidence should take away his fellow-creature's life? See how he was to be taken care of: Jackson owed him a sum: he states this to Mr. Pitt, who tells

him "he shall be no loser." He came over to be a spy, to be a traitor, to get a pardon, and to get a reward; although, if you believe him, it was to be all common acreable work, to be paid for, like all other ordinary business, by the day, or by the sheet. He was to be paid so much a day for ensnaring and murdering his client and his friend! Do you think the man deserving of credit who can do such things? No, gentlemen of the jury, I have stated the circumstances by which, in my opinion, the credit of Cockayne should be reduced to nothing in your eyes. But I do not rest there. Papers (and the gentlemen who conducted this business seemed to lay great stress upon it) were found in the chamber of the prisoner: the door was open, and, by the by, that carelessness was not an evidence of any conscious guilt.

The papers were seized. That there were some belonging to Jackson there, is very clear, because he himself expressed some anxiety about papers, which it has since been candidly confessed by Mr. Attorney-General, had nothing to do with this day's business. But I return to the credit of Cockayne: I asked him if he had put any papers himself in Jackson's room the night before the arrest? I asked him whether he had stated to any person that he had? He answered, No.

Gentlemen of the jury, the only witness I will call, shall be to show, that in that Cockayne swore false; and here, gentlemen, let me make one observation to you, the strength and good sense of which has occasioned it to be a thousand times repeated, and which you may have on a higher authority than mine. Where a witness swears glibly through a number of circumstances where it is impossible to contradict, or to impeach him; if he has with the same confidence asserted any thing wherein it turns out possible, and in which he is contradicted, it ought to damn the whole case that he has sworn to without the danger of detection. He swore to a conversation of Jackson to what he said—to what he did. He well knew that Jackson never could be a witness to prove the

contrary, unless the good sense of this jury shall enable him to prosecute the perjurer in his turn. But where he speaks to a circumstance where it is possible to apply proof, it shall be found that there he has forsworn himself. It would be horrible to suppose that the minds of any jury could be carried away, by giving credit to the testimony of this man. If he has perjured himself in one point, it is the keystone of the arch; and if you can pluck it from out the fabric of his testimony, it falls in ruin on his head.

Gentlemen, I will lay that evidence before you. But, ere I sit down, permit me remind you, that if every word that Cockayne swore, was sworn in Westminster-Hall against the prisoner at the bar, the judges would have said, in point of law, there is nothing for a jury to decide upon. *The evidence stood upon Cockayne alone—there was no second witness: The letter stood upon his testimony only.* And here your lordship will please to recollect, that no answer can be drawn from the evidence of Dejancourt, to satisfy the requisites of the statutes of treason; for it was not evidence, either to the same overt act, as affecting Jackson personally, nor of any distinct overt act; it was merely that kind of evidence, in the abuse of which arose the reason and necessity of the statute. It was about mere concomitant circumstances. The overt act was the writing and putting in the office. That was sworn to by Cockayne, and if Cockayne deserved credit, it would have gone to the establishment of the fact; but it was no proof of any overt act against Jackson. The notion of the statute is, that the overt act shall be so proved, that either, singly, should be sufficient to establish the point, where, in any other case but in treason, both shall be required. The evidence of Cockayne, clearly, would have done that, because it went to say that Jackson had actually given him the letters, and that he had put them in the office. But, if that of Dejancourt had stood singly, it could have brought nothing home at all; the hand-writing itself was Cockayne's.—he swore the superscription was his—that he put it in the

office. The hand-writing of the enclosure there is no evidence of. What did Dejancourt say? That he found in the office a letter, which he produced, and which Cockayne said was the letter he put into it. This observation appears to me to gain some additional strength, from this question: Why did not the prosecutors examine Mr. Tone? It is said they could not pardon him. My lords, they could. It was as easy, if he was guilty, to pardon him as to pardon Cockayne. Perhaps it may be said, the argument turns the other way, and affects the prisoner; because, if he had called Mr. Tone, Mr. Tone would have given evidence for him, without a pardon, even though he was guilty. With great respect, I think not. Nor is it to be imputed to the prisoner that he has not armed himself with witnesses. It is publicly known to every man in court, that he has lain in a prison near twelve months, and has been confined in a gaol from the moment of his arrest. He was not able to procure the attendance of witnesses; a stranger in the land, he could not have known whether some of the persons talked of had ever been in existence.

Gentlemen of the jury, let me not trespass further: Let me remind you, that, in a criminal case, doubts should be acquittal. Let me remind you, that you are trying a cause upon evidence, which, at the other side of the water, would preclude the jury from a verdict of condemnation. It is for you to put it out of the power of mankind to say, that the evidence which must pass harmlessly over the head of a man in England should sink him in Ireland; and that a verdict to establish the most penal consequence shall be so much more easily obtained in Ireland than in Great Britain.

Mr. Humphries, a witness on the behalf of the traverser, was called, but not appearing—

Mr. Ponsonby addressed the jury, on behalf of the prisoner; but as his speech was no more in substance than what had been delivered by Mr. Curran, we think it needless to insert it.

The lord chief justice now asked the prisoner, if he had any thing to say for himself; which, after some consideration, he declined.

Mr. Prime Serjeant then addressed the jury, in reply, recapitulating the evidence, and showing the application of it to the several overt acts laid, and to the different counts in the indictment. He divided his argument into two branches of inquiry: First, were the facts charged, proved to have been done by the prisoner. Secondly, if so, do they amount to the crime charged? And upon each of these topics he observed at great length, going through the whole of the indictment and the evidence, and making suitable comments, as they arose, from the subject matter. He particularly adverted to that part of the testimony of Cockayne, which seemed to hint, that the signing his examinations was owing to an intimidation from power—which he answered by showing, that it was three days after the threat of a commitment, that he swore his examinations. During the course of his reply, he often requested the prisoner and the counsel concerned for him to set him right if he had misstated any thing; for that he never on any occasion had stood forward with more anxiety to discharge his duty to the public, or had more painful feelings on his mind.

Mr. Prime Serjeant was interrupted by Mr. Curran, that he might introduce a witness to impeach the credibility of Cockayne—to which the court, after some little hesitation, assented.

John Watson, being sworn, deposed, that he had known Cockayne, and heard of his general character while in London; that he had been cautioned against him, and would have nothing to do with him in his private capacity. He was a compounder of *qui tam* actions and informations.

Mr. Prime Serjeant then proceeded in his reply, and recapitulated, and made many observations on the testimony, which we conceive it wholly unnecessary to insert.

After Mr. Prime Serjeant had sat down, the prisoner made some observations, as to the variance in the name of Mr. Benjamin Beresford, and also touching the constructive and implicative sort of evidence. Being asked if he would consent to the various papers which had been read going to the jury, he expressed his desire that they should, and they were accordingly sent up.

The Lord Chief Justice. Gentlemen of the jury. In this case of The King against William Jackson, clerk, the indictment is for high treason, under the 25th Edward III. c. 2. which act is considered as the first protection to the subject that ever was passed; for it defines, and precisely ascertains, what shall and what shall not be called high treason to affect the subject's life.

The two branches of the statute upon which the indictment is grounded are: first, the compassing the death of the king—and, secondly, the adhering to his enemies. And before I go further, I shall mention one important principle or two, which never have been doubted.

1. That a conspiracy to levy war against the king or his government, is evidence of compassing his death. That is laid down in all the late crown writers, and upon a review of the subject, in 4 Black. 82. also in 3 Inst. 9. and Foster, 212 and 213. The reason justifies the practice, and the principle; for the probable, if not the necessary result of levying war against the king's government is the destruction of the king, or his imprisonment, which leads to it.

2. Giving the enemy intelligence, is evidence of the second branch of this indictment: namely, the adhering to the enemies of the king.

It had been fortunate for this country, although it increases the difficulty of the judges at this day, that there is scarcely an instance in the recollection of the oldest lawyer in it, of this crime having been committed, and a prosecution for it. Each part of this indictment charges a clear and simple treason, not constructive nor any way involved. It is laid two

ways; either by compassing the king's death, or adhering to his enemies. A case has been cited from the king's bench in England, of *The King against Doctor Hensey*, who was convicted and received judgment of death. And there Lord Mansfield, by the concurrence of his brethren, as able assistants as the chief judge has had at any time, did lay it down, "that conspiring to levy war is an overt act of compassing the death of the king." The meaning of an overt act is, an act done by which the intention is disclosed. An overt act of the intention of levying war, or of bringing war into the kingdom, is settled to be an overt act of compassing the king's death. Soliciting a foreign prince, even in amity with the king, is such an overt act; "and so (says Lord Mansfield) was Cardinal Pole's case." And one of these letters is such a sollicitation of a foreign prince to invade the realm. "Letters of advice and correspondence, of intelligence to the enemy, to enable them to annoy us, or defend themselves, written and sent in order to be delivered to the enemy, are, though intercepted, overt acts of both these species of treason which have been mentioned. And that was determined by all the judges of England in *Gregg's case*, (says his lordship,) where the indictment is much like the present." Then they held that the circumstance of the letters' not being delivered did not alter the case; and to justify that, the obvious reason must occur to all your minds: that is, that no person could at any time be indicted, however mischievous the treason, unless the letters had gone to the persons for whom they were intended; in which case the traitor never could be laid hold of, at least until after the evil had been done.

I shall endeavour (feeling great difficulty from my inability at this late hour) to lay before you the impressions on my mind in such order as I think you will best understand them. It will be your verdict, however, not that of the court. It is our duty to state what the law is. I have done that generally upon the great point, and have only to add, that the common law of England and Ireland is the same; and by

that, *one* witness is enough, if you believe that witness; if he swears to the facts laid; if they are sufficiently stated to have been his acts, and go to manifest the intention imputed to him. It is the opinion of the court, that a second by the common law of Great Britain and of this kingdom is not necessary: And the statute of Wm. III. which requires two witnesses, is not in force here. That this was the common law, appears to have been the opinion of Sir Michael Foster, as high an authority as any other. He states, (p. 233.) that one witness is sufficient, if he has spoken to all material matters. And though Serjeant Hawkins is to be considered as a collector, and states many doubts, yet, he is one of the most laborious and accurate compilers in the law, and in that view deserving of much credit. Having said so much, let me bring you to the facts stated in the words of the indictment. William Jackson is charged, "that at the time of open war," &c. [His lordship now, after adducing the authority of Justice Foster, to show that public notoriety was sufficient proof of an existing war, summed the evidence with his usual accuracy, leaving no one part of it unobserved upon.]

I do not care to say much; however, it is my duty to say something as to there being no evidence produced for Mr. Jackson. He had been arrested in April, 1794; from that time to this he had such opportunities as persons in similar circumstances have, and yet no witnesses have been produced.

The prisoner. The last time the prosecutors put off my trial, owing to the non-attendance of Mr. Cockayne, a Mr. Humphreys, and two or three others, were here ready to appear for me. He was to have been here this time also, but being, as I understand, ensign and paymaster in the Dublin regiment, he was unfortunately ordered to the Isle of Man. He then said that Mr. Keane, his agent, was in court, and could contradict that part of Cockayne's testimony relative to the papers being placed in his room by Cockayne the night before they were seized.

Considerable objections were made to Mr. Keane being examined at so late a stage of the business, and at a time when Cockayne had actually left the court, but their lordships at length acquiesced.

Mr. Keane deposed, that on the day he was employed by Mr. Jackson, Mr. Cockayne called upon him to give instructions for Jackson's defence, and said, "It was rather lucky that those papers said to be found there, were not in his possession." Cockayne said, he was the friend of Jackson, and dined with this deponent in consequence; he told him that he had these papers, and put them in Jackson's room on the night before they were seized!—

The Lord Chief Justice made some observations upon the evidence of Mr. Keane. He said, it came at a stage of the business that was irregular, and could not have the weight it would at any other time, as Cockayne, whose testimony it was to encounter, was not present. With respect to the prisoner's remarks, they were not in general supported by evidence, but wherever they went to explain the writings, they ought to be attended to. Out of humanity, his lordship said he should forbear to make any comment upon what he said.

The jury were out 40 minutes, and returned at 4 o'clock in the morning; after a trial of 17 hours, with the verdict of **GUILTY**—but recommended the prisoner to mercy.

Chief Justice. Why do you recommend him?

The foreman mentioned some reasons, such as the prisoner's age, his situation in life, and his sufferings during a long imprisonment.

Chief Justice. Have you no other reason—then it is merely compassion. Have you any doubt?

Foreman. No, my lord, we have not any doubt.

Chief Justice. Gaoler, take that man away, and let him be brought up in four days.

His lordship then complimented the jury on their conduct and their verdict. It was a century since the country had been

cursed with a trial for simple high treason, and he hoped the example would prevent such criminal attempts in future.

The prisoner on this event betrayed no symptoms of emotion, but respectfully bowed towards the court.

THURSDAY, APRIL 30.

The court sat at half past 11 o'clock. The prisoner, in pursuance of the rule of court, was brought up under a guard of soldiers as formerly, and in irons. After a while, the Attorney-General came into court, and prayed judgment upon the prisoner.

Mr. Curran then moved, that the whole of the indictment should be read over, which gave rise to a desultory argument, but after some time, the business was interrupted by the apparent sickness of the prisoner.

It appearing obviously to the court that the prisoner in the dock, who had from his first coming into court shown symptoms of severe indisposition, was gradually verging towards dissolution, Lord Clonmell observed, that whilst he was in this state of insensibility, it was impossible he could pronounce the sentence of the court upon him. If Mr. Justice Foster had not mentioned a like instance of a woman called up at the Old Bailey, humanity would have suggested what ought to have been done.

Mr. Attorney-General. I wish the state of the man's health was inquired into.

There being a medical person at hand, Dr. Waite, he was desired to examine the prisoner's situation, which he did, and reported from the dock, that there was very great apprehension of his dying, if he was not instantly removed.

Chief Justice. Let him be sworn.

Gaoler. He is a quaker.

Chief Justice. Repeat an affirmation to him.

Before this was done, Mr. Kinsley, who was in one of the galleries, went into the dock, and having looked at the pri-

soner, declared his opinion that he was certainly dying. He was then sworn, and examined by the chief justice.

Q. What profession are you of?

A. An apothecary, my lord.

Q. Are you capable of forming an opinion as to the state of the prisoner's health?

A. I think I am, my lord; it cannot be mistaken. He has all the symptoms of a person on the verge of death.

Upon this the court made an order that he should be remanded; but this was found impracticable, for before the necessary arrangements could be made for his removal—he expired!

FRIDAY, MAY 1.

This morning at 8 o'clock, an inquest was held upon the body of the prisoner, which had remained in the dock during the night under a strong guard of soldiers. The court upon its adjournment had recommended this inquiry to the sheriffs, but declined giving any instructions respecting the manner of holding it, either as to time or place. Mr. Kemis, the crown solicitor, attended, assisted by counsellor Ruxton. On the other hand, Mr. Keane, the agent of the prisoner, assisted by Mr. B. Powell.

Several witnesses were examined. Mr. Gregg, the gaoler of Newgate, said, he had seen Mr. Jackson the night before, about 9 or 10 o'clock, when he appeared in health. Yesterday morning, when he went into his room, Mrs. Jackson was there. He was sitting, and the witness observed that he looked very ill. "You are not well, Mr. Jackson," says he. "No," replied the prisoner, "I was up at four, in order to be ready, that I might not keep the court waiting." He asked the prisoner whether he had eat any breakfast who replied, that "he had taken a cup of tea, which always affected his nerves." On the table was a bowl, which

seemed to have had tea, and a manchet untouched. He then took up the chamber pot, and vomited; the sweat running down his face beyond any thing he ever saw. Mrs. Jackson was folding a cravat. Witness left the room. In about a quarter of an hour, Mrs. Jackson came to him, and said, "he was not finished nor cleaned yet." Witness went up again in about ten minutes—found the prisoner sitting in a chair. Mrs. Jackson said, "that she understood that he was to have irons put on him—that it was a sight she could not endure—she was six months gone with child, and the shock might be fatal." This was about 12 o'clock; she took her leave and went down; witness put her into the carriage, and returned to the prisoner, who was sitting up, but his eyes looked very ill. His whole face was incredibly changed. Witness offered him some mint-water, and desired him to lie down and compose himself. Witness then saw the sheriff, and represented to him the prisoner's state of health, which, upon feeling his pulse, he attributed to fear. When the prisoner was coming into the carriage with the sheriff, he complained that the curiosity of the crowd hurt his feelings, and leaned backwards to conceal himself. When he came into Castle street, he exclaimed, "O! I am very ill!" When he came into the dock, every body saw how he appeared.

Surgeon Hume and Surgeon Adrien were both sworn, who, after opening the body in the view of the jury, seemed to have some little difference of opinion, as to the certainty of his having died by poison. They both agreed, the stomach was very much inflamed. Mr. Hume alleged that no sudden affection of the mind, however it might occasion death, could produce excoriation in the stomach. It was true, he said, that where the subject had died suddenly of the gut, there was often found symptoms of inflammation in that part of the stomach, resting upon the gut, particularly when the stomach has been full, but the affection generally commenced in the toe.

He was asked by Mr. Powell, whether this appearance in

the stomach might not have arisen from putrefaction, as he had been so long dead? It does not follow from poison that the stomach, in particular, should putrefy. He did not think the poison had passed from the stomach into the remainder of the system. It was probably prevented by spasm from circulating. Therefore, the infection was entirely local, and the contents still rested in the stomach. He had known many die from agitation of mind; but then there were no such symptoms. He had been called to persons who had been poisoned by means of copper vessels, but never knew them to die suddenly. They generally vomit for twenty-four hours before death. The usual symptoms resulting from very violent poisons were extreme distress, and agitation of the body, attended with profuse and deadly sweats. He did not think any man could live two moments with a stomach so affected. Never knew of any dying by metallic poisons without great pain: but knew that laurel water had been taken by Sir Theodosius Boughton, of which he had instantly died, without suffering, probably, much pain. And, upon the whole, gave his opinion, that the prisoner's death must have been occasioned by poison.

Mr. Gregg was further examined, and said, that the prisoner in the dock several times complained much, and "wished that it was all over!"—but witness then thought he alluded to the sentence, or execution of it.

Verdict of the Inquest. "We find, that the deceased William Jackson died on the 30th of April, in consequence of some acrid and mortal matter taken into his stomach; but how, or by whom administered, is, to the jury, unknown."

A small trunk was opened by sheriff Powell, which had been the property of the prisoner, in which were found his own answer to Paine's *Age of Reason*, an elegant miniature picture of his wife, and the following extracts from the psalms:

"Turn unto me, O Lord, and have mercy upon me; for I am desolate and afflicted.

"The troubles of my heart are enlarged, O bring Thou me out of my distresses.

"Look upon mine affliction and my pain, and forgive all my sins.

"Consider mine enemies, for they are many; they hate me with a cruel violence.

"O keep my soul, and deliver me. Let me not be ashamed; for I put my trust in Thee."

Upon which Counsellor Powell took occasion to remark to the jury, the improbability that a man, who had employed his last labours in vindication of the christian religion, should have put an end to his existence in a way so incompatible with its principles.

COUNSEL for the crown :—The Attorney-General, the Solicitor-General, Mr. Prime Serjeant, Messrs. Frankland and Trench: Agent, Mr. Kemis.

COUNSEL for the prisoner :—Assigned, Mr. Curran and Mr. Ponsonby: Assistants, Messrs. M'Nally, Guinness, Emmet, Burton, Green, and Sampson: Agent, Mr. Keane.

THE TRIAL

OF AN ACTION OF ADULTERY, BROUGHT BY THE EARL OF
WESTMEATH AGAINST THE HON. AUGUSTUS C. BRAD-
SHAW.*

COURT OF EXCHEQUER.

THIS was an action on the case brought by the Right Honourable Geo. Fra. Nugent, Earl of Westmeath, to recover damages from the Honourable Augustus Cavendish Bradshaw, for *criminal conversation* with the Right Honourable Mary Anne, Countess of Westmeath.

On the 20th of February, 1796, the jury being empannelled and sworn, Mr. Solicitor-General proceeded to state the case to the court and jury. He said, that he felt with peculiar reluctance the duty which fell to his lot this day, but the task, however painful, was such as his duty to his client indispensably bound him to perform. In common with every friend to morality and conjugal happiness, he felt for the depravity and incontinence he should have occasion this day to lay before a respectable and conscientious jury, who would, he was convinced, estimate, from their own feelings, the irreparable

* This trial, whilst it exhibits Mr. Curran's abilities in another line, may be a seasonable relief to the reader's mind, already disgusted with plots and stratagems, treasons and treacheries. Like an interlude between the acts of a tragedy, it will call his attention, for a little while, from orimes to follies. He will here get "a peep behind the curtain," a degrading view of human nature, of that part of it called *high life* among "the better sorts of people—the well-borns of the land," who certainly ought to show other examples to "the swinish multitude." It is the duty of the moralist to expose vice in every rank, and show that it is particularly odious in the female sex.

injury sustained by the noble earl, who came this day to claim, from the laws and justice of his country, some reparation, in damages, for the wound inflicted on his honour, his domestic happiness, and the comforts of his bosom, which no damages, however great, could heal. The case was of itself so strong, and so very atrocious, as to render little comment, indeed, necessary beyond the facts which, he was instructed, would be substantiated in evidence.

The crime was of a nature as injurious to society as to the individual, and peculiarly so, as it was perpetrated in that rank of life which, while it aggravated the guilt, was most likely to render the example pernicious. In stating this case, it would be incumbent upon him to keep, indeed, very much within the limits of his instructions, and instead of going to the extent he might, in explaining all the circumstances attendant on this shameful business, he should confine himself to those bounds which decorum, and respect to the court and so respectable a jury, necessarily prescribed.

The noble earl, in this case, was several years ago married to his countess—a young lady of most respectable family and connections, polished education, high accomplishments, and great beauty of person. The match, on the part of the noble earl, was purely the result of love to the lady, and by no means founded on any considerations which could arise from her fortune: and the lady accepted his lordship's hand as well from motives of reciprocal affection, as from the considerations of rank, honour, and the respect which she was likely to enjoy in an alliance with a nobleman of his lordship's high rank, splendid fortune, and illustrious connections. It could not, indeed, be supposed the lady, or her friends, could have any possible objection to a match at once so eligible and advantageous. The slightest pretence of this sort never appeared or existed, and, therefore, the compulsion of parental authority in urging a young lady into a match violatory to her affections, or her delicacy, with a man of a disagreeable person, or advanced years, so fre-

quently pleaded in extenuation for similar infidelities, could not be applied in this.

The noble earl and his lady lived together several years, apparently in the happiest intercourse of reciprocal affection and domestic felicity, surrounded by all the blandishments which high rank, ample fortune, and fashionable splendour, could confer. The lady bore his lordship several beautiful children.

His lordship, under all the tortures to which his feelings have been exposed on this occasion, impressed by the fondest affections of a parent to his offspring, the tender pledges of a once happy union with the woman he loved, had great unwillingness to bring forward this matter; but prompted by a sense of injury to the honour of his family, to the happiness of a husband and a father, he surmounted all obstacles of private reluctance, and resolved to appeal to the laws of his country for redress.

Mr. Solicitor here repeated to the court and jury, what he had been instructed to say would appear to them in evidence, and then concluded with observing, that he had heard it whispered, since he came into court, this action was not a serious one, and that it was not the object of his noble client to amerce the defendant in very considerable damages; but this insinuation, he declared, was utterly false and unfounded. Would it be believed, that the noble earl, who sued in this case, was so insensible to his own honour, or to the solemnity of a high court of judicature, as to play with a subject of this sort, or to bring forward a trial so materially interesting to the honour of his family, himself, and his children, as a mere matter of form? Would it be believed, that any man of profession, who held any regard for his own character or interest, would come forward as privy to such a pretended trial, and conspire to impose on a court and jury? The thing was too absurd and ridiculous to be believed for a moment. The noble lord had too great a regard for the dignity of his own rank, to harbour so mean an intention. The damages in this

case were laid at 20,000*l.* a sum which, considering the rank of the parties, the irreparable injury sustained by his client, on whose domestic happiness an incurable wound had been inflicted, and the affluent fortune of the defendant was by no means adequate to the offence. But, to the feelings of the jury, upon the justice of the case, he would submit the evidence, not doubting that their candour and impartiality would vindicate the confidence which the constitution and their country this day reposed in the important duty committed to them.

EVIDENCE ON THE PART OF THE PLAINTIFF.

The Rev. George Lambert being sworn, said, that he had married Lord and Lady Westmeath, on the 27th of April, 1784—that during the first six years of their marriage, he was in the habit of visiting the family frequently, and therefore could venture to say with safety, that his lordship and lady lived in the greatest harmony and comfort during that time; but what has taken place since he does not know.

Cross-examined by Mr. Curran. Mr. Lambert said, he believed that Lady Westmeath lived in London, and Lord Westmeath in Ireland. Admits that his lordship was a man of a gay, social, and convivial turn, and was a good deal in the society of gentlemen—the lady also was fond of gay company, that is “the high fashionable circles.” He did not think that any of those ladies were methodists or swaddlers. He could not say, whether the objects of the noble lord and his lady were very different things—He can’t answer for what happened in London with respect to lady Westmeath’s *private affairs*; thank God, he knew nothing of that sort.

Mr. Curran. “Now, Mr. Lambert, do you take upon you to swear that seriously?”—(A loud laugh in court.)

Answer. “I mean as to connections of a criminal kind.”

Mary Cuttle—Was housemaid in his lordship’s house in Portman-square, London, and proved the very frequent visits

of the honourable Mr. Bradshaw to the right honourable Lady Westmeath; he usually came alone, and staid very late.

Mary Dunn, the countess's nurse, also proved the frequent and unseasonable visits of Mr. Bradshaw, and that on these occasions she had orders never to bring up the children—said that Lady Westmeath slept out several nights, &c.

Eliza Leeks was “her ladyship's own woman”—frequently saw Mr. Bradshaw with her lady, and that she several times slept abroad during his lordship's absence—she described the condition of the sofas, couches, &c. after these meetings, and how her ladyship went to the masquerade one night by stealth when Lord Westmeath was confined to his room by sickness.

John Doogan, her ladyship's coachman, with a considerable quantity of brogue, gave a laughable description of the meetings of Mr. B. with lady W. “in her *towers* round the circular road.”* The side blinds were up, but then the front curtains had not been completely let down, so that he had no doubt of what was going on in the carriage.

Walter Kennedy, another coachman—his testimony went further to ascertain and expose the shameful conduct of this meretricious woman in these *coach interviews*, at noon day in the face of the public. They frequently took place. One in particular he remembered; it was on an evening, as they were driving on the circular road; Mr. Bradshaw came into the coach—the blinds were up, but the silk curtains were not down, so he could not be mistaken as to the nature of the business.

The cross-examination of the witnesses by Mr. Curran (who is a complete master of the *vis comica*) afforded much amusement to a very crowded court. It was with great difficulty that even the judges could maintain their gravity.

* The circular road is a beautiful promenade and riding-place surrounding the city of Dublin, where all the beauty and fashion of the country go to show themselves, some in carriages, some on horseback, and many, rather than not be seen at all, on foot.

But we decline particulars; *we* must not disturb the decorum of *our* readers.

Mr. Curran, on behalf of Mr. Bradshaw, addressed the jury with his usual ability, in a speech of considerable length and ingenuity, through which we shall only attempt to follow him in his principal points, for, indeed, it was scarcely possible, in the bustle and pressure of an extremely crowded court, accurately to follow the rapid and argumentative eloquence of that able orator.

He said, that he was taught to expect from the strong and pathetic picture drawn by the learned solicitor-general, in stating this case to the jury, that some proofs would be adduced to establish what seemed so material to the founding of any claim for damages in this case against his client. He was taught by that statement to expect, that a body of evidence would be brought forward, to prove to the jury, that his client had been guilty of an enormous breach of friendship, of honour, of hospitality, towards the family of the noble earl, who was the plaintiff in this case. He was taught to expect, that strong and irrefragable proofs would be adduced to show that much intimacy and confidence had existed between his client and the noble earl, and that much of both had been violated and betrayed. He was taught to expect it would be shown, that the noble earl was a man whose sole happiness lay in the fidelity of his wife, and that by the loss of that, through the consummate artifices of an arch seducer, in his client, the happiness of the noble lord was lost for ever. He was taught to expect some proof beyond doubt, that his client had made a base use of an intimacy with the noble earl to practise upon the innocent, inexperienced, and unwary mind of his lady, and to avail himself of the corruption of her morality and honour, in some unguarded moment, by triumphing over her chastity, the inestimable jewel of her rank and sex. He did expect, and so he presumed must the gentlemen of the jury expect, that proof would be adduced to show, that his client was a man hackneyed in the trade of

seduction, and hardened in the depravity of inexperienced years; that Lady Westmeath was an innocent, virtuous, inexperienced, unsuspecting girl, in her teens, ignorant of the world, and unguarded against the snares which a wicked, hardened, and experienced seducer might cast in her way.

But did any such point whatever appear in the evidence brought forward this day? No such thing. No acquaintance amounting to what would be called intimacy, much less confidential friendship, had been proved to have existed between his client and the noble lord; no arts or stratagems of seduction appeared to have been practised on the part of his client towards the lady; and unless those points, upon which the whole stress of the claim of damages seemed to be rested, were fully and substantially proved, he trusted, that a jury of twelve rational and respectable men, would not suffer themselves to be cajoled upon the mere representations of counsel, unsupported by evidence; would not suffer themselves to be *swaddled* into a verdict of damages unfounded upon any just claim, even supposing the facts in evidence to be all true.

The jury would take into their consideration, that suppose the whole of the charges adduced this day against his client were false, how was it possible for Mr. Bradshaw to contradict the evidence, however innocent he may be of the facts. The charges were made against him by the servants who were in Lord Westmeath's employment and about his lady's person; they might be actuated by motives of malice, or the hope of a reward; they might have abused the mind of Lord Westmeath himself; and how was Mr. Bradshaw, under such general charges, without any date specified, to be able to bring his recollection to proofs in his defence, more especially from those scenes in England, where the very privacy sworn to by the witnesses, baffles any possibility of evidence on the part of his client, to disprove their charges.

The sum of damages in such a case as the present, could only be ascertained by the indubitable proof of the facts charged,

and the degree of guilt attendant on those facts. The jury would, therefore, weigh well the circumstances of the evidence, and the kind of witnesses who gave it, before they would suffer themselves to be cajoled, or *swaddled* into a verdict, which would be the very reverse of that justice which, in the present case, they were sworn to render impartially between party and party. He did not wish to treat with jesting levity a subject of so serious a nature as the present; but really, the charge of a young man scarcely more than one or two and twenty, seducing the innocent, unsuspecting, *inexperienced* mind of a lady, who had been *twelve years married*, and practised in all the gayeties of the fashionable world, was almost too ludicrous to be seriously attended to.

The witnesses who appeared this day, were servants who had been employed about the lady's person, and as they would be the strongest proof of the facts stated, in case they swore true, so were they from their situation and circumstances, most likely to become the objects of subornation. The hopes of reward, of future patronage and protection, on the one hand, and the impossibility of detection on the other, were, to persons in that rank of life, strong inducements indeed, to swear any thing that should be dictated to them in support of such a charge.

The learned Solicitor in stating this case, had pictured the lady in the most amiable traits—A person elegantly fashioned! A mind highly educated! Manners highly accomplished! Delicacy most refined! Sentiments most pure and virtuous! But how was this *blushing* portrait suited to the original? A lady receiving male visitors in her dressing room; dashing from the play to the masquerade unattended by her husband, her friends, or even by her own servants; *swaggering* in a curricule through the streets of London with a gallant; and beating all the rounds of fashionable folly, dissipation, and extravagance!

See what the evidence of my lady's waiting woman says on the occasion: she talks of her lady's gallanting visits, received in her dressing-room, with the privacy of her menial

servant : she describes the lady, like another Messalina, in loose attire, prepared for the embraces of her paramour: she speaks of sofas daubed with powder and shoe dirt—the touzling of couches—the discomfiture of dresses—and the rumpling of her ladyship's plumage ! But, in his mind, a female witness, who could be *up to scene painting of this kind*, was not exactly the kind of evidence that should meet the credit of a jury—and if this woman should have sworn falsely, and Mr. Bradshaw was not an actor in any of those scenes, yet how is he to disprove it by evidence ?

If Lady Westméath had so much command of her house, and such complete dominion over her servants, while her lord was in Ireland, and could make so shameful a use of her sofas, and her couches, in her own house—what possible necessity could there be for his client to bring the lady elsewhere, to take her from home in his curricie, furnished with her night clothes, and keep her out all night, unless it was—what nobody could suppose—with intent to raise evidence against himself, and to give palpable foundation for such an action as the present. The jury would, therefore, take into their consideration the whole of the evidence, and judge of its probability. And upon this ground he would trouble them with another observation or two.

With respect to the evidence of what was alleged to have passed in England, there was no positive proof whatever to warrant a verdict which was to impeach the morality, and affect the property of his client. Every young man of fashionable gayety would pique himself on gallant attentions to a fine woman, if she would permit them. The evidence, such as it was, stated nothing more than mere presumptive circumstances ; but from such proofs, and such testimony, a conscientious jury, could not, he thought, feel their minds so far convinced beyond doubt, as to justify to their own consciences, a verdict against the defendant. And with respect to the facts alleged to have happened in Ireland, how did the probability stand ?—upon the testimony of two coachmen !

But every man who considered their assertions for a moment, must think it as improbable as it would be extraordinary, that a lady of her rank, who might have commanded a hundred places and opportunities for such purposes, would have chosen to expose her amours to the privity and black-guarding scrutiny of her coachmen and footmen—and this too in her own coach, upon the high road, in broad day, when so many people were passing and repassing, he thought it a most enormous improbability, that a woman of her rank would be guilty of a fact so beastly and so shameless!—it was scarcely to be believed of the most libidinous prostitute—and therefore he trusted the jury would be extremely cautious indeed, before they believed such assertions upon such kind of testimony, on a charge so materially affecting the family, the fame, and the property of an individual, whose only reliance in this case, for justice, was the sound discretion of an honest, conscientious, and discerning jury.

But, if the jury should differ with him as to the probability of the facts, the next thing to be considered was the *quantum* of damages which ought to be demanded in such a case. He owned, he did expect from the statement set out by the learned solicitor, on the commencement of this trial, that some evidence would be produced, to prove the existence of an intimacy or familiar friendship between his client and the noble earl who was plaintiff in this case, or that some extraordinary stratagems had been used by his client to debauch the morals and entrap the chastity of an innocent, virtuous, inexperienced young lady, in order to justify his lordship's claim for damages; but no such proof appeared: no violation of friendship or hospitality had been even attempted to be proved against his client. Much has been said of the wounds inflicted on the feelings and domestic happiness of the noble earl. Such indeed might be the plea of a man in the humble industrious walks of life, the inexperienced innocence of whose conjugal partner falling a prey to the stratagems of some artful seducer, might indeed be said to deprive him of

the affections of the partner of his humble industry, the fond attendant on his sick bed, the frugal companion of his thrifty but comfortable board, the friend and mother of his rising offspring, and the object of all his hope, all his affection, and all his felicity. Such a man indeed might justly complain of the privation of all his comforts, and the most incurable wounds inflicted upon his earthly happiness, and such a man would come to a jury of his country, with the justest claims for reparation in damages against the wealthy and artful seducer. But did the plaintiff in this case come forward with such claims? In the breasts of the great folks of the present day, *fashionable manners*, there was but too much reason to believe, had repressed those feelings upon such topics, though they might, in the coarse and vulgar feelings of men in humble life, wear the greatest *acumen*.

The loss of comfort, the privation of happiness, was by no means so great in fashionable life; for there, the wife was not the constant partner of her husband's pleasures, or his discomfitures—nor the affectionate nurse attendant on his sick bed—nor his fond comforter in adversity—nor the protector of his children when he dies. For, in fashionable life, *dissipation*, not *comfort*, is the object of both, and the man of rank has his consolation in *another way* for those infidelities, which, perhaps, owe their origin to *his own misconduct*. It is to the pang of suffering, and not to the plumage of title, that compensation is due. The jury, therefore, would not suffer themselves to be bantered into an idea, that a *great man* was to have damages in a case of this sort proportionate to his *titular rank*, without adverting to the proportion which the injury bore to his feelings, and the cause of that injury to his own conduct.

Could it be supposed, that the tender feelings of conjugal affection and domestic comfort bear the same proportion as in humble and industrious life, in those ranks of fashionable dissipation, where, while the husband lavishes his time and fortune at the club-house, the banquet, or the gaming table,

night after night—the wife rolls her *vulture*, at midnight, from theatres to drums, from drums to routs, from routs to masquerades, attended by her cudgelled footmen and blazing flambeaux, and dashing through all the rounds of *fashionable rakery* from midnight till morning? In such a round of *modern high life*, the idea of domestic comfort and conjugal felicity, is mere *Arcadian fancy*! The learned gentleman, in painting the injuries sustained by his noble client on this ground, knew very well he was painting from the scenes of “his early reading,” and not from his own observations on modern manners; and if such feelings, under such circumstances, were only to be found in the romance of Sir Philip Sydney’s *Arcadia*, the damages in such a case ought not to exceed the price of the book.

It was stated that Lord Westmeath’s feelings were agonized, and his pride irreparably hurt, by losing “the consolations and comforts of his lady’s company and conversation!” Lord Westmeath, in Ireland, *rolling* away with one equipage for months together, in all the rounds of fashionable luxury and amusement, in the enjoyment of the bottle, and the pageantry of the camp; and Lady Westmeath, in London, *swaggering* away in another equipage in all the rounds of fashionable dissipation and amusement—for months too—and then poor Lord Westmeath complains of “the loss of his comforts!” in the privation of his lady’s company and conversation, not more than two hundred miles from him, by his own choice, for eight months together! The idea was, in fact, too ludicrous for the serious reflection of a rational and discerning jury.

One point, however, was most important for their consideration. It was, whether the plaintiff in this case had taken that care of the morals and the conduct of his wife, which his *authority* and his *duty*, as a husband, enabled and called on him to do? How did the fact appear in evidence? Lord Westmeath comes over to Ireland; and leaving his wife in London, exposed to all those temptations which a

round of gay life and fashionable levity might be supposed to present—with a fortune, an equipage, and a house at her command, complete mistress of her own conduct and propensities!

How stood the charge with respect to his client in this case? What had appeared from the evidence of the clergyman? Lady Westmeath, not, as the learned solicitor had painted her ladyship, an innocent young female, inexperienced, and such as might be supposed unwary and unripe in the ways of the world; but an *experienced matron*, twelve years married, the mother of several children, and well practised in all the mysteries, modes, and dissipations of the gay world! What was Mr. Bradshaw? Not an experienced rake, versed in the arts of seduction by the vitious practice of years, but the younger brother of a respectable family, not many years emerged from the control of his tutor—and of an age young enough almost for the lady to have been his mother!

Was this the young lady of innocence and inexperience, polished education, exalted sentiments, and refined feelings whom the learned counsel had painted in such glowing and angelic tints—with the bloom of the plumb unbroken upon her cheek—and all the blossoms of youthful innocence flowering and flourishing around her? Was the lady a bird of that age likely to be caught with the sort of chaff which his youthful client might be supposed to cast before her, *if her own inclinations had not led HER to be the DECOY, without the necessity of stratagem?*

Suppose that on the part of his client he were to admit the whole of the facts stated in evidence—yet, would not the jury consider the rank and the *years* of the lady—the utter improbability that any advances of a criminal kind would have proceeded from a *young* gentleman, who, from his years, must be supposed inexperienced in the dissipations of fashionable life, as his client was? And, would not the jury consider the uncontrolled freedom in which Lord West-

meath permitted his lady to range through all the rounds of fashionable dissipation—exposed to all those temptations that beset a woman of levity—absent from her husband—unchecked by the vigilance of her friends—and prone to every indulgence in pleasure and luxury, which her rank and fortune could supply? And, would not a jury, thus considering, even if they believed the facts, make a wide difference, indeed, between the imputed guilt of his client, and that of a common seducer, who had triumphed over the chastity of an innocent and inexperienced female? They must surely consider his client as *the party seduced*—and in estimating the damages, if they should think any were justly due, they should apportion them to the feelings and not to the rank of the plaintiff—they would consider, how lightly *bagatelles* and *faux pas* of this kind were thought of in the circles of HIGH LIFE—they would consider how far his lordship's own conduct and neglect were instrumental to the injury of which he complained—they would estimate the uncontrolled influence of modern and fashionable manners upon the minds of high rank—and find such a verdict as, upon due consideration, became the good sense and conscientious justice of moral and discerning men.

Counsellor Saurin, on behalf of the plaintiff, said, that considering the strength of the evidence adduced on behalf of his client, and the irrefragable proofs upon which his case had been substantiated, he felt no necessity to say any thing to the jury, in reply to what had fallen from the learned counsel on the other side, notwithstanding the eloquence and ingenuity with which he had argued on behalf of his client; he should therefore rest with the discretion of the court, for any observations upon the evidence, in this case, which might be deemed necessary for the direction of the jury.

Lord Chief Baron Yelverton then addressed the jury, observing, that the present case was of such a nature as required very little exertion indeed, on the part of the plaintiff's counsel, to aggravate the injury proved in evidence; a case,

so atrocious in all its circumstances, so fraught with the most shameful and abandoned depravity, and so violatory to every principle of decorum, of virtue, of morality, and of female modesty, as, he thanked God, was not to be matched by any other example in *this* country.

The proofs in this case were manifest—were strong—were circumstantially corroborative of each other—and stood wholly uncontradicted by any evidence to the contrary. The jury could, therefore, in his mind, have no reasonable doubt of the fact. It would be then for them to consider, under all the circumstances of the case, the culpability of the defendant, and the nature and magnitude of the injury sustained by the plaintiff—an injury, which no pecuniary consideration, however great, could compensate, and he doubted not the jury would find themselves justified in giving such damages, as, while their verdict marked the regard of moral and conscientious men for the sacred rights of the conjugal bed, should at the same time hold out an example to check and deter the progress of a crime in this country, which, of late years, had made such alarming strides in another kingdom, whose *fashions* and whose *vices* we are too apt to borrow, and which, there was but too much reason to fear, were rapidly gaining ground in the fashionable circles of this country.

The jury, after a short consultation, returned a verdict for the plaintiff. *Damages*, 10,000*l.* !

BRIEF ACCOUNT

OF THE TRIAL OF WILLIAM ORR.*

CARRICKFERGUS ASSISES.

WILLIAM ORR, a wealthy farmer of Faranshane, in the county of Antrim, was committed to gaol for high treason, under a warrant of commitment, bearing date the 17th of September, 1796.

At the Lent assises, 1797, he was arraigned on an indictment framed under the insurrection act, for administering unlawful oaths; he then pleaded not guilty, but his trial was postponed on his affidavit, stating the absence of a material witness.

At the next assises he was put upon his trial, on Monday, the 18th day of September, before Lord Chief Baron Yelverton; two witnesses appeared against him, one of the name of Wheatly, and another of the name of Lindsay, both private soldiers in the Fifeshire regiment of fencibles.

* This trial is here inserted as a necessary introduction to that of Peter Finerty. The admirable speech of Mr. Curran, on that trial, seemed to require an illustration from the melancholy story of William Orr, the Proto-martyr. The editor, however, has to lament that he cannot give a regular account of the proceedings, as government prohibited all publications on the subject, except their own—yet there were other publications, which brought on the destruction of the Star printing-office by the soldiery.

EVIDENCE ON BEHALF OF THE CROWN.

Wheatly swore, that in April, 1796, he had been in Scotland on furlough, and was on his return by Antrim to join his regiment then quartered at Derry. That he then, upon the 24th or 25th of that month, met with several persons, who swore him into the brotherhood of United Irishmen, and afterwards took him to the house of the prisoner, whom they found employed in sowing flax in his field. He swore that an assembly was called in the house of the prisoner, who acted as chairman or secretary, which he called a Baronial Committee; and that there it was debated, whether he should be intrusted with the printed constitution of the society to promote the institution among his fellow soldiers. That it was agreed that he should have one. That an oath was thereupon administered to him by the prisoner, which was to keep the secrets of United Irishmen, and not for any reward or punishment to discover on them. The witness threw in many circumstances about arms and the Northern Star, which were shown to him, also a draw-well to put the aristocrats into! He swore, that all he did was through fear of his life, which they threatened—that he was told they had armed men enough to get a reform by force, if they could not by fair means—he said the intention of the society was to assist the French to liberate Ireland, &c.

On his cross-examination by Mr. Curran, he denied that he had ever offered to desert, or asked money with that view from any body, but was offered money to induce him by a person in Belfast, which he refused. He was asked, if he had sent any cartridges to Mr. Orr when in prison, as a token? and answered he believed not. He was asked, whether he ever told any person that he had taken the test of a soldier in a certain way that suited his own mind best, and that he never was satisfied as a soldier? This he denied, but after some pause went on, “unless it might be

to some of the United Irishmen before I knew what they meant." He denied that he ever said he intended to desert, though he might have said he was drunk when he enlisted.

Q. Had you ever any conversation with one Walker, a soldier, about being Up.

A. I never advised him to be Up.

Q. Had you ever any such conversation with Walker?

A. I might endeavour to learn what he knew about being Up.

Q. Did you ever tell him he might take the oath of secrecy without going further?

A. I told him I would show him what was in my pocket-book, which was only a parcel of old letters.

Q. Did you ever tell him how you *United Men* got powder from abroad in flax-seed hogsheads, and how you had smiths at work making you pikes.

A. I never told him of powder; what I might have told him about pikes was only in the way of a whim.

The second witness, Lindsay, did not attempt to swear any thing of the words, nor even of the nature of the oath, whether it was innocent or guilty, lawful or unlawful. He only said, he was in the room when an oath was administered, and of course was dismissed by Mr. Sampson without any cross-examination, as a witness, whether swearing false or true, totally immaterial.

[Here the evidence for the crown closed.]

The counsel for the prisoner, Mr. Curran and Mr. Sampson, now insisted, that, from the evidence in this case, if the prisoner was guilty of any thing, it was high treason—that they believed him innocent of that and every such charge; but, in order that that matter might be investigated according to the known law and constitution of the country, the present indictment must be given up, or quashed, and a bill for high treason sent up, otherwise it was in vain that the wisdom of

former times, that the experience of ages, and the voice of the wisest and most upright judges hath allowed and sanctioned the statute 25 Edw. III. called by Lord Coke the *Blessed Statute*, as the Parliament which enacted it was called *Parliamentum Benedictum*. It was in vain that this excellent statute, never deviated from but for the worst of purposes, and in the worst of times, had given to the accused of treason many securities against that power ever too likely to be exerted against an individual accused and prosecuted by the crown, for any alleged offence directly against the royal power. Experience had shown how horribly the accusations for high treason had been multiplied by princes or their ministers. How hard it was for any subject to have a fair trial, against whom the angry brow of offended royalty was knit; against whom the treasure of the nation was lavishly employed; against whom influence, authority, and power, open and secret, were hostilely arrayed; when the sheriff might be a dependent on the bounty of the crown, as in times of baseness and oppression usually had been the case, since sheriffs ceased to be elected by the people; who might be induced to select from his county, not the indifferent, the disinterested, and unbiassed, to pass judgment upon their fellow creature's life, but the ignorant, the bigoted, the servile, or the mercenary; who, like the executioner, forgetting that they were sworn to judge of the guilt or innocence of the accused according to the evidence, and make true deliverance between the king and the prisoner, might only await the beckon of authority to do their office.

So careful had the law of England been to guard against the various ways by which power might oppress, and defence be borne down; against the partiality or frailty of judges, juries, factions and parties, that, in England, a man to be tried for such an offence as now was attempted to be proved, would, under the 25th Edw. III. have a list of his jurors delivered to him in due time, in order to be well prepared to challenge such as he did not think impartial. He would

be entitled to thirty-five peremptory challenges, and as many more as he could show reasonable cause for challenging. He would be entitled to a list of witnesses for a length of time previous to his trial, in order to enable him to sift their character, and, if it was bad or vile, to be able to make that important circumstance appear to the jury, so as to set aside such testimony in the whole, or in part, as the case might warrant; and *two* witnesses, at least, must swear to the same treason before he could be affected. He would also be entitled to a copy of his indictment five days, at least, before his trial, in order to apprise him of the exact nature of the charge to which he was to apply his defence. And, lastly, he would be allowed, by his two counsel, to make a defence, by observations upon the law and the fact of his case, and to utter, fully and boldly, whatever might tend to direct the consciences, or inform the understandings of his jury, as to his intention, which is, in other words, as to his innocence or guilt.

For what reason, might be matter of curiosity, but nothing to the present case, there was less protection and less indulgence to the accused in Ireland, but still there was a great deal, in case of treason, to make the law esteemed. But, see how all these wise and boasted provisions of freedom and glories of the English law will be filched away, if high treason, (for such it is, if any thing,) specially prosecuted by the crown, out of the stock-purse of the nation, by the king's attorney-general, and other select and able lawyers of the crown, in times so heated, and a situation so critical, that, if ever there was occasion for these blessed protections against prejudice and power, it is that time; when so great a part of the community is accused, and secret informers publicly advertised for, if high treason be tried under this insurrection act, made hastily on the spur of an unfortunate occasion, and happily, if not already expired, shortly about to do so. The prisoner will be tried, it is true, and possibly be found guilty; but it will be a finding contrary to the most sacred

law, and a violation of that statute which stands now almost singly the glory of our national jurisprudence, and the bulwark of public security. Better would it be to wait until the legislature should repeal or suspend this statute, if they so thought fit, as they had already done the *habeas corpus* act, than for a court of justice thus directly to do so by trying under another form that which, if it be any thing, is high treason. For, thus, the unfortunate prisoner is deprived of every safeguard, and even of that natural right of the accused, to explain his own intentions and reasons upon the nature of the testimony offered against him.

Perhaps, a few observations by those whose professions have taught them to discriminate between the fictitious and artful relations of a hired informer and the simple tale of truth, might tend to save the life of an innocent and honest man; if so, terrible, indeed, would be the consequence of the prevention. That peculiarity in our law, that, though in cases of the smallest import, counsel shall be heard at length, whereas in capital felonies their mouths shall be shut, is reconciled by supposing the judge a counsel for the prisoner; but that was a forced supposition, and against the fact and nature of mankind. The makers of the wise statutes of treason knew that judges were men in a station greatly exposed to influence, and guarded against their frailties. They knew that judges, however upright in their intentions, could not take the pains of studying a prisoner's case, as he himself or his counsel could; and that in any cause which implied a contention between the higher order of society and the lower, with which he had neither intercourse nor fellow feeling, it required virtue, sagacity, and magnanimity enough, to be merely indifferent. That a most cogent reason for adhering to the good old law, and the exact and precise classification of offences was, that, in this very case, though the prisoner was tried and acquitted under this indictment, yet it could not be pleaded in bar, without averments dangerous and difficult to an indictment for high treason, which might

be supported by the identical testimony, and thus a man might be twice put in jeopardy of his life for the same offence.

Mr. Attorney-General made a very short reply to these arguments; he called upon any man to say in what instance he had prosecuted with any unbecoming rigour; and whether, on the part of the crown, throughout the circuit, the business had not been conducted as mildly and as mercifully as possible. He also made some observations upon what seemed to him an extraordinary motion, where the counsel for the prisoner sought to have their client tried for a deeper and more penal offence than that for which he had been already indicted by the crown. He could not conceive that the gentlemen expected any further benefit from this motion, than to give them an opportunity of addressing the passions of the audience.

The Lord Chief Baron, after hearing the counsel for the prisoner at length, refused the motion, observing, that he had heard it patiently, by which it might appear, that the prisoner had no cause to complain of rigour or hardship; although arguments seemed not so much directed to him, as artfully and ingeniously designed, under the pretence of addressing the court, to affect the minds of the jury and bystanders.

EVIDENCE FOR THE PRISONER.

On this the counsel for the prisoner called a witness of the name of Charles McClaverty, in order to discredit and contradict the testimony of Wheatly, who swore, that in January last he overtook Wheatly, with one Serjeant Millar, on the road from Ballyclone to Carrickfergus; they went together into an alehouse on the road side to drink, when a man, who was lying on a bed in the room where they sat, spoke to Millar, and claimed acquaintance with him, having served with him abroad. Nothing happened there, till Wheatly called the witness out and proceeded on the road together.

That Wheatly asked this witness whether he knew Orr the prisoner at Carrickfergus, and whether he would go to the gaol in order to befriend him? and the witness answering, that he neither knew Orr, nor could get into the gaol if he wished it, Wheatly pressed it, saying, you must try to do it, and all you have to tell him is, that if he will give me a coloured coat and some money I will desert, and if he will provide Lindsay with another coat and two guineas, I will persuade him to desert also, adding, that Lindsay was as ready to desert as himself. That it was for his principles that he (Wheatly) had been flogged at Ballymoney, and that he was so true that he had destroyed the United Irishmen's papers at the time of taking off his coat, which made him sorry, as he had preserved them through all the towns. That Wheatly again pressed the witness to go to the gaol for the sake of the prisoner, to which the witness replied, that if he did go, Orr would not trust him, as he was a stranger; upon which Wheatly held out his hand with a cartridge, calling it a secret note to serve as a token that he came from a soldier; he at the same time said, that it was not he, but Lindsay, that swore against Orr, and that Lindsay was so false, that he would swear the hill of Howth was no bigger than a pound of candles! Here he stated that Serjeant Millar came up, and the conversation ceased. That he the witness, when he arrived at Carrickfergus, got a pass from a magistrate into the gaol, where he was introduced by one Storey to Orr, to whom he told what had passed between him and the soldier—Orr's reply was, that the soldier must be a villain. Upon returning to Wheatly, he was again urged to carry a message into the gaol to Orr, but refused.

John Young called, further to contradict Wheatly. He proved that Wheatly had told him, that he was not only drunk when he enlisted in Scotland, but that he had taken the test oath, so as to suit his own mind, which saying Wheatly had denied on his cross-examination.

To impeach the testimony of M'Claverty, the same Ser-

jeant Millar, who was found to be in court, was brought upon the table, and swore, that no such conversation had passed between Wheatly and M'Claverty, because if it had he must have heard it, as he walked with them from their leaving the house where they stopped to drink, till they came within a quarter of a mile of Carrickfergus.

[Here the evidence closed.]

The Lord Chief Baron summed up from his notes, and particularly dwelt upon the testimony of Wheatly, which he thought as satisfactory as any he had ever heard, insomuch, that he was convinced he must have had an education greatly above what usually falls to the lot of men in his situation, and proceeded in a strain of observation highly complimentary to the witness, adding, that so far as Lindsay's testimony went, it confirmed what he had said. His lordship seemed to have conceived a different impression of the prisoner's witness, M'Claverty, upon whom he made severe animadversions, observing at the same time, that he was contradicted by the Serjeant Millar.

The jury retired about 7 o'clock, and remained till 6 the next morning, when they came out to meet the judge, and were desirous of giving a verdict, so qualified as to save the prisoner's life. When asked by the clerk of the crown if they were agreed, no answer was made for some time—the question being repeated, the foreman, much distressed, answered, "we leave him in your lordship's mercy, he is in your lordship's mercy!" On which the judge desired them to return and consider of their verdict. Ten of them only returned, two remaining without. They returned again, and very nearly the same thing was repeated, and it was not till the third time, the foreman still hesitating to pronounce the word *Guilty*. Mr. M'Naghtan, one of the jury, reprimanded the foreman, calling upon him to pronounce the prisoner guilty—upon which the foreman, who was a man in years,

and affected even to the loss of speech, handed in the verdict, with a recommendation to mercy, which was taken by the clerk.

The judge promised to lay their recommendation before government, and it was understood by some that he would represent his case favourably himself. But, on the following day, he mentioned in court that he had not pledged himself so to do, but had immediately transmitted by express the recommendation of the jury.

The prisoner heard the verdict without the smallest agitation, and was immediately remanded to gaol.

On Monday the 18th, Mr. Justice Chamberlaine, by desire of Lord Yelverton, assisted in court.

A motion was made by the prisoner's counsel in arrest of judgment, and argued at considerable length by Mr. Curran, followed by Mr. Sampson.—The arguments consisted of two branches; 1st. That no crime was alleged upon the record of which the court have any cognisance, or upon which any judgment could be passed; 2dly. That the act of parliament upon which the prisoner was indicted was no longer in existence.

As to the first point, it was said, that the charge in the indictment was, that the prisoner did contemptuously, maliciously, and feloniously administer a certain oath, or engagement, upon a book, which oath and engagement imported to bind said Wheatly to be of an association, brotherhood, and society, formed for seditious purposes.

Another count for procuring him by threats and persuasions to take like oath.

Another count was for contemptuously, maliciously, and feloniously administering an oath not to inform against a seditious confederacy.

And another for procuring him by threats and persuasions to take such oath.

Such were the several charges against the prisoner; but still it came to the same thing. The question was, whether

there was any direct averment of the criminality of the obligation? It was now to be taken *ex concessis*, that every oath administered by a person not duly qualified by law, was not a capital felony within the insurrection act, for that would be to make felons guilty of death upon the gallows, not only all the free-masons and friendly brothers in the kingdom, who take oaths of secrecy as to the concerns of their respective institutions, but most certainly those persons who have associated secretly and mysteriously under the denomination of *Orangemen* in this unfortunate kingdom. This being the case, the criminality of the association was the only thing to be inquired into, and if this be not specifically and distinctly alleged upon the record, there can be no judgment; for the most incontrovertible principle of our law, both criminal and civil, is, that every judgment must be *secundum allegata et probata*. It is not enough that it be proved unless it be alleged, no more than it is enough to allege it without proving it; for, suppose the grand master of the masons of Ireland were to be indicted for seditiously, contemptuously, maliciously, and feloniously administering, or persuading any one to take an oath to keep secret what should be revealed to him, or to be present at the administering of an oath, binding any one to be of a society, or keep the secrets of a society, to which was to be tacked the words "formed for seditious purposes," and evidence were given of his being a free-mason, and having actually administered an oath of secrecy, and an ignorant or prejudiced jury to find him guilty, because it was clearly proved that he belonged to an association bound together by an obligation of secrecy, would any learned judge, even though there were such finding, caring for the laws, pronounce sentence of death upon that record, merely because there was the epithet "malicious," inserted, which is no more than a word of course; or because it was said to be a seditious association, without showing how or wherein it had been seditious?

If a man were to be indicted for "not having the fear of God before his eyes," and a jury were to find him guilty, surely no judge would pronounce any sentence against him; for, in the words of the law, no indictment would lie for not having the fear of God before his eyes, and, as surely, none would lie "for being seditious," much less "for binding another to be seditious." The law in most cases was so jealous of fanciful or constructive charges, and of multiplying offences indefinitely, that it expressed crimes by technical terms so precise, and definitions so exact, as to exclude all inference or construction. Thus, murder is a homicide of malice aforethought; burglary, a breaking of a dwelling-house in the night, with intent to commit a felony; and so of other offences. Now, when the law has appropriated any complex term to express a crime, no periphrasis can be admitted, because of the uncertainty; but, when there is no such term, the crime must be alleged as clearly as language can express it. Juries answer as to the matters of fact, the judges to the point of law; the jury is sworn to decide according to the evidence, the judge must look to the record, as the warrant of his judgment. If it do not state some distinct offence, let the verdict be as it may, he cannot take upon him to give judgment; for, though the grand jury may find facts, they cannot find crimes not known to the law.

The rule of construction in all indictments is well laid down in 2 Hawk. 320. tit. *Indictment*, sect. 57. "That the special matter of the whole fact ought to be set forth with such certainty, that it may judicially appear to the court, that the indictors have not gone upon insufficient premises." And upon this ground it is agreed, that an indictment finding that a person hath feloniously broken prison, without showing the cause of his imprisonment, by which it might appear that it was of such a nature, that the breaking might amount to felony is insufficient. An indictment charging a man with a nuisance, in respect of a fact which is lawful in itself, as the erecting of an inn, and which only becomes

unlawful from particular circumstances, is insufficient, unless it set forth some particular circumstances which make it unlawful. An indictment for perjury must show in what manner, and in what court, the oath was taken; an indictment for procuring must show the false tokens.

In the same book, page 322. sect. 59. it is said, that every indictment must charge a man with some particular offence, or else with several particularly and certainly expressed, and not with being an offender in general; for no one can tell what defence to make to a charge so uncertain, or to plead it either in bar or abatement of a subsequent prosecution. Neither can it appear that the facts given in evidence against a defendant, on such a general accusation, are the same of which the indictors have accused him. Neither can it judicially appear to the court what punishment is proper for an offence so loosely expressed. Therefore, it is not sufficient to charge a man with being a common defamer, a disturber of the peace, or of being a man of evil behaviour, or a common conspirator. The only exception to this rule is a common barrator, and that because it is a term of art. And so cautious is the law of giving a dangerous latitude, even in a single instance, that it has rendered it necessary to give the defendant a note of the particular act of barratry intended to be proved against him. So, though in cases of libel, the words "malicious" and "seditious" be used, the purport or tenor must be set out. And, lastly, this rule, applicable universally to all cases, is emphatically laid down in the same author, page 324. "That in an indictment nothing material shall be taken by intendment or implication;" yet, on this record is no specification of the nature of that which is called sedition; all is inference, uncertainty, implication, presumption and intendment. To administer an oath, not being duly qualified by law, is a misdemeanor, the punishment of which, according to its circumstances, is intrusted to the discretion of the judge; but what the sedition is which should make this a crime worthy of death, to warrant

the judgment upon the record, is an inference, which the judge must take upon himself to draw now, and posterity must inquire in vain.

Indeed, the statute explaining the insurrection act, 37 Geo. III. which states, that administering an oath to be of any association, brotherhood, society, committee, or confederacy whatsoever, was felony within that law, shows, that it was not so before; at least, that it was doubtful, and, if so, it should be an argument against taking away life, where that explanation was *ex post facto*. Secondly, it was argued, that the statute was expired, and being so, no proceedings could be had under it. 1 Hawk. 169. it is laid down, p. 40. sect. 6. if one commit an offence which is made felony by statute, and the statute be repealed, he cannot be punished as a felon in respect of that statute. And, 2 Hale, 291. where an offence is made felony by statute, and the act repealed, the offences committed before such repeal, and the proceedings are discharged, and cannot be proceeded upon, after such repeal, unless a special clause in the act of repeal be made, enabling such proceedings after the repeal for offences committed before the repeal, Hale, 309. is to the same point. Now, though it might be possible to draw subtle distinctions between an act expired and an act repealed, yet, in substance, it is the same. In both cases, the law ceases to have any force; and as the penalties in all are supposed to warn rather than to revenge, it cannot be good policy to take away the life of a man, when the example can be of no use to deter others, inasmuch as thereafter, there can be no such offence against it. Where, prior to the statute 7 and 8 Wm. III. one was convicted of an offence before a commission of oyer and terminer, and the king died before judgment, no judgment could afterwards be, because the authority of the judge was determined. How much stronger is it where the law itself is determined.

It only then remained to show, that the act was expired, which it was argued would appear as well from the words of it, as from the circumstances under which it was made.

The concluding clause of it says, that it shall be in force till the first day of Jan. 1797, and to the end of the next session, and no longer. Now both of these terms were expired, and therefore it was in force no longer. It might be said, that the next session meant to the next 1st of January, 1797, and, by the rule of criticism, that the relative should belong to the latest antecedent. But, however grammarians might consider that rule, its application would here make nonsense of that which was good sense without it. For here the intention of the legislature was to make a temporary law of extreme severity, which should last no longer than till they should have an opportunity of meeting again to consider whether it ought to be renewed or not. The sessions usually begin in January or February, therefore, by taking the words in the plainest sense, even though it be not the most critical; that is, taking *next* to mean *next* to the time of enacting, as next week or next month means the week or month next to the present, the reason of the thing is complete, and the two given periods are satisfied. Whereas the opposite construction is involved in absurdity, for it makes the additional period longer than the original one, and is no less a solecism than it would be to say a day and a year instead of a year and a day. The unusual and unforeseen commencement of the last session, would surely not be insisted on as an argument against this. Besides, there is an unvarying mode of expression in all acts of parliament, as well as all legal instruments, when a new period of time is to arise after another before expressed, for then the expletive adverb of time is always interposed, as here it would have been said to the 1st of January, 1797, and to the end of the *then next* session of parliament, or the session *next* ensuing, *from thence*. But no such adverb being used here, it is too much to presume, as well against the reason of the thing, as against the life of the prisoner, that it was intended to be inserted. And the rule of the last antecedent only applies where there are two antecedents in the sentence, to one or other of which it must refer, which is not the case here. And it is used

merely in cases of ambiguity, when the sense is equal either way or perfectly equivocal. But, above all, in this case the great and imperious law of mercy steps in, that in all penal laws the construction shall be that which is most favourable. In the slightest misdemeanors this rule prevails, where pecuniary mulcts or temporary deprivation of liberty are the punishments, because if there be a mistake in such cases, it is upon the safest side. "How much more should this obtain, where life is the forfeit, for which no future atonement can be made; where, if there be an error, it must ever remain a blot, which neither time nor tears can wash away."

The Attorney-General did not think it necessary to make any answer to these arguments, further than by denying that the act was expired; adding, that though it were, there was this difference between a repealed and expired law, that the repeal showed that the act never should have existed, and implied a censure retrospectively, which the expiration did not.

Both judges declared their opinions free from the smallest doubt, that no ground whatever had been stated upon either of the points to affect their judgments. Much indeed had been addressed to the feelings of the court; in answer to which Lord Yelverton adverted to a passage in the history of the Roman commonwealth, where, after the expulsion of the Tarquins, it was attempted by the Patricians to restore royalty, and the argument they made use of was, "that a government by laws was stern and cruel, inasmuch as laws had neither hearts to feel nor ears to hear; whereas a government by kings was merciful, inasmuch as the sources of humanity and tenderness were open to entreaty." For his part he was acting under a government by laws, and bound to speak the voice of the law, which had neither feelings nor passions!

Mr. Curran, for the prisoner, now produced to the court the affidavits of three respective jurors in the cause, in order to show, that a most fatal injustice would be done in pronouncing sentence of death; and that where the proceedings had

been such as appeared by these affidavits, a new trial should be had, lest a verdict so obtained should disgrace the administration of the law, and produce consequences the very reverse of those which were sought to be produced by examples of this terrible and awful kind. Mr. Curran had gone the length of stating the drunkenness of the jury, and the threats used by some of them, and would have stated the affidavits fully, but was interrupted by the court before he had gone through them, upon the ground of indelicacy towards the jury.

It was on this occasion that Mr. Curran made a display of touching eloquence which has been seldom equalled. He drew an affecting picture of the situation of his client, where the mere announcing the truth might pull down resentment upon him from that quarter where resentment would be certain death, and whilst the dagger was in his heart, the very groans which he should utter, or the blood which might issue from his wounds, might be used as a justification of the poniard. He knew the terrible reply to which he was subjecting his client. He knew how easy it was for those who wished to crush him, to set their foot upon his neck and extinguish him and his complaints for ever. But the truth was the case upon which he was instructed to insist—the truth was the case upon which only the prisoner had chosen to commit his destiny.

Mr. Attorney-General, with some warmth, expressed his astonishment at the mention of a new trial in a capital case. The prisoner's counsel said, they were ready to produce authorities.* The Attorney-General said, that if there was any ground to attach the jury, the counsel might move upon it. Mr. Curran thereupon moved, that the jury be attached, but was stopped by the court as before mentioned; who observed, that however proper such application might be to

* 2 Strange, 968. 1 Burrow, 394.

a higher power, they could not sit to hear it now in court—and the prisoner was remanded to gaol.

In the affidavits alluded to by the counsel, two of the jurors swore, that whiskey was conveyed into the jury-room through the window, and the greater part of the jury made drunk by it, even to vomiting—one of them deposed, that by reason of his age and infirmity, and being also threatened and intimidated by one of his fellows, (Mr. M'Naghtan,) he was induced to concur in the verdict of guilty contrary to his opinion. A third juror made affidavit, that he was induced by the representations of some of his fellows to believe, that should they return a verdict of guilty, Mr. Orr would not be made to suffer death, else he would not have agreed to the verdict.

When the prisoner was put to the bar to receive sentence of death, the recommendation of the jury having produced no effect, the court was crowded with spectators, in whose countenances were impressed that public feeling which his fate had occasioned. Lord Yelverton addressed him in a voice so low as scarcely to be distinguishable, and on pronouncing the words, "You are to be taken to the place from whence you came, from thence to the common place of execution, the gallows, there to be hung by the neck until you are dead," the tears burst from his eyes, his head sunk between his hands, and in that attitude he remained for nearly ten minutes, during which time the prisoner eyed him with a kind of compassionate countenance, and as soon as he raised his head, begged leave to say a very few words, which were as follows :—"My Lord, I have been found guilty, but I am innocent. I am no felon; it is worse for the jury who found me so than me. I can forgive them, and am not afraid to die; but the witness who swore against me is grossly perjured." Having said this, he walked from the bar with a firm and undaunted step, and was reconducted under a strong guard to the gaol.*

* Through the whole of this trial, not only the outside hall, but the interior of the court, were crowded with armed soldiers, to the exclusion of

In the interval of suspense, between the day of pronouncing the sentence and Saturday, the 7th of October, appointed for the execution, various representations were made to government (it is supposed) for and against the prisoner, but one in particular on his behalf, by the Rev. Geo. Macartney, D. D. the magistrate, as appears by the committal, who took Wheatly's examinations against him, and was principally concerned in his prosecution—Who (on the circumstances detailed in the affidavits, of which the following is the substance) procured the depositions upon oath of the two reverend gentlemen therein mentioned, and immediately repaired to Dublin, where he laid them, together with his own affidavit, before his excellency the lord lieutenant, and used every conscientious exertion to prevent the execution from being enforced.

The Rev. James Elder, dissenting minister of the parish of Finvoy, in the county of Antrim, stated in his affidavit, that he was, in the month of April, 1796, sent for to visit a soldier who appeared to be deranged in his mind, and had attempted to commit suicide—That on going to see him, and after he, together with the Rev. Alex. Montgomery, had prayed by his side for some time, this deponent asked who he was, whence he came, and where he was going?—On which he said, his name was Wheatly, that he came from Maybole in Scotland, and was going to Derry to join his regiment, and that his colonel's name was Durham; and on being asked the nature of his crimes, he said that he had been guilty of seducing women in Scotland, which he considered as a great crime, and was a great weight upon his mind—That he went out with a party from Londonderry and seized an unstatutable still, under the direction of a revenue officer; that the party was surrounded by a number of people, who made use of abusive language, on which the party fired on the people, who were in an adjoining field, and that he, Wheatly, ran a man through with his bayonet, which he considered as mur-

many of the freeholders: and these soldiers were appointed to act as constables with fixed bayonets!

der, and which hung heavy on his mind—That the revenue officer was wounded in the affray, and afterwards sent to gaol, where he died of his wounds; and that he, the said Wheatly, *was prevailed upon to swear a false oath against some of the prisoners*, for which he was afraid they would suffer, which also hung heavy on his mind.

This affidavit of Mr Elder was confirmed by that of the Rev. Alex. Montgomery.

The Rev. Geo. Macartney deposed, that at the spring assises of 1797, when it was thought the trial of Mr. Orr would be brought on, said Wheatly came to this deponent, and told him he had something of consequence to communicate; and, on taking him aside, said, that he had seen a Mr. Elder a few minutes before, who, he was certain, was brought there to invalidate his testimony against Mr. Orr, from a conversation that had passed between him and said Elder; which conversation, this deponent believes, must have been the same alluded to in Mr. Elder's affidavit.

The execution was respited until Tuesday the 10th, and from thence till Saturday the 14th, during which period it was confidently hoped that a pardon would follow.

An intimation having in the mean time come to the prisoner's friends, that provided the leading gentlemen of the county would memorial in his favour, mercy would be shown; a memorial was drawn up with the above affidavits annexed, which was signed by many, with several reasons assigned by different memorialists for interfering on his behalf, some representing it as a matter of policy to mitigate the sentence, others speaking of it as a subject of mercy, others as a measure of justice. During this doubtful period, the following publication appeared in the Belfast News-Letter of the 2d of October, 1797:

“We hear from the best authority, that William Orr, now under sentence of death, at Carrickfergus, has given under his hand-writing an acknowledgment of his crime and

the justness of his sentence, which he has been induced to do, to ease his conscience, and to acquit the jury, who has been calumniated for their verdict against him."

Upon this, Mr. Orr wrote the following letter, which he sent by his brother to Dublin, and which was delivered to the lord lieutenant:—

"May it please your Excellency,

"Having received from your excellency's clemency that respite from death which affords me the opportunity of humbly and sincerely thanking you, I avail myself of the indulgence of pen and paper, and of that goodness which you have already manifested towards me, to contradict a most cruel and injurious publication in the newspapers, stating, that I had confessed myself guilty of the crimes which a perjured wretch came forward to swear against me. My lord, it is not by the confession of crimes which would render me unfit for society, that I expect to live; it is upon the strength of that innocence which I will boldly maintain with my last breath, which I have already solemnly affirmed in a declaration which I thought was to have been my last, and which I had directed to be published as my vindication from infamy, ten times more terrible to me than death.

"I know, my lord, that my own unhappy situation, the anguish of a distracted wife, and the mistaken tenderness of an affectionate brother, have been resorted to to procure that confession, and I was given to understand, that my life would have been spared upon such conditions; I as decidedly refused, as I should do now, though your excellency's pardon was to be the reward. Judge, then, my lord, of the situation of a man to whom life was offered upon no other conditions than that of betraying himself by a confession both false and base.

"And lastly, let me make one humble observation to your excellency, that the evidence should be strong indeed to

induce a conviction—that an industrious man, enjoying both comfort and competence, who has lived all his life in one neighbourhood, whose character, as well as that of all his stock, has been free from reproach of any kind; who, certainly, if allowed to say so much for himself, would not shed the blood of any human creature; who is a husband and the father of a family—would engage himself with a common soldier in any system that had for its end robbery, murder and destruction, for such was the evidence of the witness Wheatly.

“If upon these grounds, and the facts already submitted to your excellency, I am to be pardoned, I shall not fail to entertain the most dutiful sense of gratitude for that act of justice as well as mercy; and, in the mean time, I beg to remain your excellency's

“Most obedient humble servant,

“WILLIAM ORR.

“*Carrickfergus gaol, Oct. 10, 1797.*”

It was about this time that Orr's wife wrote a letter to Lady Camden, the rough draft of which came into the reporter's hands, and is, as nearly as can be made out, to the following purport :

TO HER EXCELLENCY THE COUNTESS OF CAMDEN.

“GRIEF like mine admits of no apology—Despair and sorrow are my only companions, yet hope bids me look up to you for happiness—A miserable object, a mother and a wife, comes praying for mercy to the father of her children—

“Pardon, most gracious lady, the phrensy of a distracted woman, and listen to the petition of the miserable wife of the unfortunate William Orr—I come a suppliant, a low and humble slave of misery, praying your ladyship's intercession on behalf of the life of my husband, whose existence is dearer to me than my own—O! hear my complaint, and grant

one beam of hope to my frantic imagination—You are the only person who has it in her power to remove never-ending misery from a wretched individual, to cheer the afflicted heart, and give comfort and consolation to her that was ready to perish. Suffer me to assure you that he is innocent of the crime for which he is under sentence of death—O cruel sentence! that will, without your interference, tear me from my husband, and rob my five poor little unoffending children of their father; the best of fathers, the kindest and dearest that ever lived—They join in solicitations for his life; their innocent, fervent, grateful prayers will rise as a memorial before the throne of God; their lisping tongues shall be taught, with unceasing gratitude, to bless and adore the noble, generous, exalted character of their benefactress, the revered and loved Countess of Camden; how will that name be imprinted on their very souls, never to be effaced!—Forgive my importunity—the life of my husband, the father of my children's life is at stake—Despair has almost made me mad—I call on you to exert yourself to save his life; thy God will reward thee, thy country thank thee, his children will bless thee, if thou grantest my petition; and when length of years and increase of honour shall make thee tired of earthly joys, and the curtain of death gently close around thy bed, may the angels of God descend and take care that the last human existence shall not receive one rude blast to hasten its extinction—At that awful period, may the recollection of your successful interference, added to the prospect of your future felicity”

On the evening preceding the day fixed for the execution, a messenger arrived from the castle to the high sheriff. It was now considered as a matter of certainty, that he was the messenger of mercy; but when, on the contrary, it was known that he had brought orders for immediate execution, the effect produced upon the anxious public is much more easily imagined than described,

On Saturday morning, the 14th of October, he was brought out from the gaol, in which he had consumed the last year of his existence: and though his complexion was somewhat altered from the glow of health which it formerly wore, the more than ordinary comeliness of his countenance still remained. His stature was fully six feet, and his person graceful. The character he had borne amongst his neighbours confirmed a favourable impression of him, for he was beloved by all; and in the relations of private life, as a father and a husband, his conduct was amiable and exemplary.

When he understood that he was to be indulged in a post-chaise to convey him to the place of execution, being apprehensive that he might have soldiers for his companions, he seemed more desirous to walk, in order to enjoy the company of the two clergymen, Mr. Stavely and Mr. Hill, whom he had requested to attend him; but these gentlemen being permitted to go with him in the carriage, he arrived at the place of execution about one o'clock, escorted by a very strong military guard, composed of horse, foot, and artillery, detached from different regiments in Belfast and Carrickfergus. At the place of execution, the infantry were drawn up in a triangular form round the gallows, on the outside of which the cavalry continued to move, whilst, at some little distance, two fieldpieces were planted. After employing some time in prayer, he sung a few verses of the 23d psalm, and seemed to dwell upon the 4th verse:—

“ Yea, tho’ I walk in death’s dark vale,

“ Yet will I fear no ill,” &c.

And these words from 1st Corinthians, chap. xiv.—

“ So when this corruptible shall have put on incorruption, and this mortality shall have put on immortality, then shall

be brought to pass the saying, "Death is swallowed up in Victory."

"O Death, where is thy sting?—O Grave, where is thy victory?"

He then addressed all who stood near, as well his friends as the military, officers and privates, who crowded round him, and loudly and ardently declared his innocence, the falsehood of the prosecutor, and also of a newspaper publication, stating that he had acknowledged the justice of his sentence, and confessed his guilt. To guard against future calumnies, when he should be no longer in this world to contradict them, he had procured a few printed copies of a just and true declaration, the original of which, in his own writing, he had deposited in the hands of the Rev. John Savage, the clergyman who had attended him in gaol, during that period when he found it necessary to prepare himself for eternity. He then distributed a considerable number of the printed papers, remonstrating calmly with those who seemed eager to snatch away too many, and observing, that by dividing them equally, there would be enough to satisfy the curiosity of all. He then shook hands with his friends, took leave of the two clergymen who attended him, and mounted the scaffold with a firm step; and after the executioner had put the rope about his neck, and when he awaited only the last fatal movement, he gave a preconcerted signal with his handkerchief; and here, for the first time, he discovered some appearance of indignation, exclaiming, "I am no traitor—I am persecuted for a persecuted country. Great Jehovah, receive my soul.—I die in the true faith of a presbyterian."

WILLIAM ORR'S LETTER TO HIS WIFE.

" Carrickfergus, Saturday Morning.

" My dear Wife,

" I now think proper to mention the grounds of my present encouragement, under the apprehension of shortly appearing before my merciful God and Redeemer—My entire innocence of the crime I am charged with—Secondly, a well-founded hope of meeting a merciful God—Thirdly, a firm confidence that that God will be a husband to you and a father to your little children, whom I do recommend to his divine care and protection. And my last request is, that you will train them up in the knowledge of that religion which is the ground of my present comfort, and the foundation of that happiness, which, I trust, I shall enjoy on that day when we must all appear before the Great Judge—Farewell my dear wife, farewell.

" WILLIAM ORR."

THE TRIAL

OF PETER FINERTY FOR A LIBEL.

AT a court of oyer and terminer, and general gaol delivery, held for the county of the city of Dublin, before Mr. Justice Downes, on the 22d of December, 1797, Peter Finerty was brought to the bar, and tried on an indictment (drawn in the usual form) charging him with being the printer and publisher of the following false, scandalous, and libellous letter, addressed to Earl Camden :

The Press, Thursday, 26th Oct. 1797.

TO HIS EXCELLENCY THE LORD LIEUTENANT.

My Lord,

I address your excellency on a subject as awful and interesting, as any that hath engaged the feelings of this suffering country. The oppression of an individual leads to the oppression of every member in the state, as his death, however specially palliated by forms, may lead to the death of the constitution. Your lordship already anticipates me; and your conscience has told you, that I allude to the circumstance of Mr. Orr, whose case every man has now made his own, by discovering the principle on which Mr. Pitt sent you to execute his orders in Ireland.

The death of Mr. Orr the nation has pronounced one of the most sanguinary and savage acts that has disgraced the laws. In perjury, did you not hear, my lord, the verdict

was given?—perjury accompanied with terror, as terror has marked every step of your government. Vengeance and desolation were to fall on those who would not plunge themselves in blood. These were not strong enough; against the express law of the land, not only was drink introduced to the jury, but drunkenness itself, beastly and criminal drunkenness, was employed to procure the murder of a better man than any that now surrounds you. But, well may juries think themselves justified in their drunken verdicts, if debauched and drunken judges,* swilling spirits on the seat of justice itself, shall set the country so excellent an example.

Repentance, which is a slow virtue, hastened, however, to declare the innocence of the victim. The mischief which perjury had done, truth now stepped forward to repair; neither was she too late, had humanity formed any part of your councils. Stung with remorse, on the return of reason, part of his jury solemnly and soberly made oath, that their verdict had been given under the unhappy influence of drink and intimidation; and in the most serious affidavit that ever was made, by acknowledging their crime, endeavoured to atone to God, and to their country, for the sin into which they had been seduced.

The informer, too, a man, it must be owned, not much famed for veracity, but stung with the like remorse, deposed that all he had formerly sworn was malicious and untrue, and that from compunction alone he was induced to make a full disclosure of his great and enormous guilt. In this confession the wicked man had no temptation to perjury; he was not to be paid for that; he had not in view, like another Judas, the “thirty pieces of silver;” if he was to receive a reward, he knew he must not look for it in this world.

Those testimonies were followed by the solemn declarations of the dying man himself; and the approach of death is not a moment when men are given to deceive both themselves and the world. Good and religious men are not apt,

* Alluding to ————.

by perjury on their death-beds, to close the gates of Heaven against themselves, like those who have no hope. But if these solemn declarations deserve no regard, then is there no truth in justice; and though the innocence of the accused had even remained doubtful, it was your duty, my lord, and you had no exemption from that duty, to have interposed your arm, and saved him from the death that perjury, drunkenness, and bribery, had prepared for him.

Let not the nation be told that you are a passive instrument in the hands of others—if passive you be, then is your office a shadow indeed—if an active instrument, as you ought to be, you did not perform the duty which the laws required of you—you did not exercise the prerogative of mercy—that mercy which the constitution had intrusted to you for the safety of the subject, by guarding him from the oppression of wicked men. Innocent it appears he was; his blood has been shed; and the precedent indeed is awful.

Had Frazier and Ross been found guilty of the murder committed on a harmless and industrious peasant—lay your hand to your heart, my lord, and answer without advisers, would you not have pardoned those ruffians? After the proof you have given of your mercy, I must suppose your clemency unbounded. Have no *Orangemen*,* convicted on the purest evidence, been at any time pardoned? Is not their oath of blood connived at? Was not that oath manufactured at the command of power, and does not power itself discipline those brigands? But suppose the evidence

* The *Orangemen* are a set of people who formed themselves into armed bodies in opposition to the *United Men*; these were composed of men of all persuasions, who professed to unite for the general freedom of Ireland. [See Mr. Rowan's trial.] The former are mostly of the established church, many of them placemen, retainers, or expectants of court favours; they avow a devoted attachment to what is called the *protestant ascendancy*, and the *English* system of governing the country; they mount the Orange cockade; and are much more inveterate against their unfortunate countrymen than the English or Scottish soldiery.

of Wheatly had been true, what was the offence of Mr. Orr? Not that he had taken an oath of blood and extermination—for then he had not suffered—but that he had taken an oath of charity and of union, of humanity and of peace. He has suffered; shall we then be told that your government will conciliate public opinion, or that the people will not continue to look for a better?

Was the unhappy man respited but to torture him, to insult both justice and the nation, to carry the persecution into the bosom of his wife and children? Is this the prerogative of mercy? What would your father have said unto you, had he lived to witness this falling off—"Son, (he would have said,) I am a father; I have a daughter; I have known misfortune—the world has pitied me, and I am not ungrateful."

Let us explore the causes of this sanguinary destruction of the people. Is it that you are determined to revenge the regret expressed by them at the recall of your predecessor; and well knowing they will not shed tears at the departure of his successor, that you are resolved to make them weep during your stay? Yes, my lord, I repeat during your stay, for it may not be necessary that a royal yacht, manned and decorated for the purpose, should waft you from the shores of an angered and insulted country.

Another cause—Is it to be wondered that a successor of Lord Fitzwilliam should sign the death-warrant of Mr. Orr? Mr. Pitt had learned that a merciful lord lieutenant was unsuited to a government of violence. It was no compliment to the native clemency of a Camden, that he sent you into Ireland; and what has been our portion under the change, but massacre and rape, military murders, desolation and terror!

Had you spared Mr. Orr, you thought, perhaps, the numerous families of those whom your administration had devoted, might accuse you of partiality; and thus to prove your consistency, you are content to be suspected of wanting the only quality this country wishes you to exercise.

But, my lord, it will not do ; though your guards and your soldiers, and your thousands, and your tens of thousands, should conduct innocence to death—it will not do. A voice has cried in the wilderness ; and let the deserted streets of Carrickfergus proclaim to all the world, that good men will not be intimidated, and that they are yet more numerous than your soldiers.

We are not Domitian's people ; we are not lopped at a blow, but it looks as if some fate had doomed us to be destroyed one by one, as the Persian tyrant ordered the hairs to be plucked from the tail of his beast. Beasts we have been, the vile carriers of the vilest burdens, that the vilest masters could lay upon us. But the yoke is shaken, persecution has provoked to love, and united Ireland against foreign despotism.

Feasting in your castle, in the midst of your myrmidons and bishops, you have little concerned yourself about the expelled and miserable cottager, whose dwelling, at the moment of your mirth, was in flames, his wife and daughter then under the violation of some commissioned ravager, his son agonizing on the bayonet, and his helpless infants crying in vain for mercy. These are lamentations that stain not the hour of carousal. Under intoxicated councils, the constitution has reeled to its centre ; justice herself is not only blind and drunk, but deaf, like Festus, "to the words of soberness and truth."

My lord, the people of Ireland did hope, that mercy would not have been denied to a most worthy and innocent man, when they understood that one of the worst advisers, and most imperious members of your cabinet, had abandoned the kingdom. Had he been of your late councils, the odium might have been divided ; at present you have the best claim to it. Let, however, the awful execution of Mr. Orr be a lesson to all unthinking juries ; and let them cease to flatter themselves that the soberest recommendation of theirs, and of the presiding judge, can stop the course of carnage, which

sanguinary, and I do not fear to say, unconstitutional laws, have ordered to be loosed; let them remember, that, like Macbeth, the servants of the crown have waded so far in blood that they find it easier to go on than to go back.

MARCUS.

The Attorney-General, in stating the case on behalf of the government, observed, that he had been directed by the executive, to prosecute the traverser for printing a most malicious, false and scandalous libel on the government of the country; that it was a libel upon the administration of the justice of the country, a libel that rendered the judges in the administration of justice odious and contemptible in the eyes of the people. This, he said, was the consequence intended to be produced, and for which this libel has been published, a purpose that must tend to the total destruction of government and "social order." When respect for the administration of justice in any country is gone, every thing is lost; our lives, our property, are in danger. "No man who has read that paper called THE PRESS, that shall deliberate on the series of papers that have been published in it, but must say it was calculated to run down the administration of justice in this country; a systematic determination to disgrace the justice of the country in the eyes of the people; to make the lower orders of the people, who were ever and anon clamorous, to rise against the state; to make them believe that justice and law are curbed in the administration of them, and that they cannot have impartial justice done them." He further observed to the jury, that, in the discharge of that sacred trust which was reposed in them, they were to defend the liberty of the press, and, in so doing, they would preserve the freedom of life and property. That the law had made it necessary, in order to preserve the liberty of the press, to restrain its licentiousness; and that the liberty of the press could never be destroyed but by its licentiousness. Mr. Attorney then concluded, by

reading the opinion of Mr. Justice Buller, in the case of *The King against Watson*, 2 Term Rep. 235.

EVIDENCE ON THE PART OF THE CROWN.

The witnesses on behalf of government being sworn and examined, proved, that the traverser was the editor of the paper called *THE PRESS*, in one of the numbers of which the letter signed *MARCUS* had been inserted.

Mr. Fletcher concisely stated the case on behalf of the traverser :—He called the attention of the jury to the celebrated letter of Junius to the king, part of which he read. The printer of that letter (said he) was prosecuted for publishing it, and an English jury would only find him guilty of the fact of *publishing*, but they would not convict him of having published it with a seditious or malicious intent.

Mr. Fletcher then observed upon the abuse which had been given to the character of Lord Moira, in the papers of this country—to an offspring of the soil of Ireland—Had he not bled in the cause of England and Ireland? Is the freedom of the press to consist merely in panegyriizing the measures of the government, let them be right or wrong? If that be the freedom of the press, he had no idea of such a liberty of the press. That is not the liberty of the press which put down ship-money; that is not the liberty of the press which produced the revolution; that is not the liberty of the press which brought the present king to the throne. In the case of the dispensing powers, what do the seven bishops not owe to the liberty of the press? That was the liberty of the press that forced the house of Stuart from the throne. He conjured the jury to weigh well the intention of the traverser, and if, after the evidence that should be adduced, they should be of opinion he did publish those facts (most of which Lord Moira had offered to verify at the bar of the English house of lords) falsely, and with the malicious and seditious purpose laid in the indictment, then, and in that case only, could they be warranted to find the traverser guilty.

EVIDENCE FOR THE TRAVERSER.

Lord Yelverton deposed, that the recommendation of the jury in favour of Mr. Orr had been forwarded by him, and was received at the castle; and that Mr. Orr had been respited three times.

The counsel for the traverser then attempted to introduce evidence to prove the truth of the matter contained in the publication; and also to rebut the insinuations of the Attorney-General, as to there being a systematic determination to disgrace the administration; they offered to prove that *THE PRESS* was then the only paper printed in the city of Dublin not in the pay of government; but were prevented by the court.

MR. CURRAN. Never did I feel myself so sunk under the importance of any cause. To speak to a question of this kind, at any time, would require the greatest talent, and the most matured deliberation; but, to be obliged without either of these advantages, to speak to a question that hath so deeply shaken the feelings of this already irritated and agitated nation, is a task that fills me with embarrassment and dismay. Neither my learned colleague nor myself received any instructions or license until after the jury were actually sworn, and we both of us came here under an idea that we should not take any part in the trial. This circumstance I mention, not as an idle apology for an effort that cannot be the subject of either praise or censure, but, as a call upon you, gentlemen of the jury, to supply the defects of my efforts, by a double exertion of your attention.

Perhaps I ought to regret that I cannot begin with any compliment, that may recommend me or my client personally to your favour. A more artful advocate would probably begin his address to you by compliments on your patriotism, and by felicitating his client upon the happy selection of his jury, and upon that unsuspected impartiality in which, if he was innocent, he must be safe. You must be conscious, gen-

lemen, that such idle verbiage as that, could not convey either my sentiments or my client's upon that subject. You know, and we know, upon what occasion you are come, and by whom you have been chosen; you are come to try an accusation professedly brought forward by the state, chosen by a sheriff who is appointed by our accuser.

[Here Mr. Attorney-General said, the sheriff was elected by the city, the observation was therefore unfounded.]

Be it so. I will not now stop to inquire whose property the city may be considered to be; but the learned gentleman seems to forget, that the election by that city, to whomsoever it may belong, is absolutely void without the approbation of that very lord lieutenant* who is the prosecutor in this case. I do, therefore, repeat, gentlemen, that not a man of you has been called to that box by the voice of my client; that he has had no power to object to a single man among you, though the crown has, and that you yourselves must feel under what influence you are chosen, or for what qualifications you are particularly selected. At a moment when this wretched land is shaken to its centre by the dreadful conflicts of the different branches of the community; between those who call themselves the partizans of liberty, and those who call themselves the partizans of power; between the advocates of infliction, and the advocates of suffering—upon such a question as the present, and at such a season, can any man be at a loss to guess from what class of character and opinion, a friend to either party would resort for that jury which was to decide between them both. I trust, gentlemen, you know me too well to suppose that I could be capable of treating you with any personal disrespect; I am speaking to you in the honest

* The corporation of Dublin then was, now is, and will be, under the influence of government, who always contrive a variety of profitable contracts, &c. for the leading members. The large fish being gratified, the small fry keep open mouthed to be fed also.

confidence of your fellow citizen. When I allude to those unworthy imputations of supposed bias, or passion, or partiality, that may have marked you out for your present situation, I do so in order to warn you of the ground on which you stand—of the point of awful responsibility in which you are placed, to your conscience and to your country—and to remind you, that if you have been put into that box from any unworthy reliance on your complaisance, or your servility, you have it in your power, before you leave it, to refute and to punish so vile an expectation by the integrity of your verdict; to remind you, that you have it yet in your power to show to as many Irishmen as yet linger in their country, that all law and justice have not taken their flight with our prosperity and our peace; that the sanctity of an oath, and the honesty of a juror, are not yet dead amongst us; and that if our courts of justice are superseded by so many strange and terrible tribunals,* it is not because they are deficient either in wisdom or virtue.

Gentlemen, it is necessary that you should have a clear idea, first, of the law, by which this question is to be decided; secondly, of the nature and object of the prosecution. As to the first it is my duty to inform you, that the law respecting libels has been much changed of late. Heretofore, in consequence of some decisions of the judges in Westminster-Hall, the jury was conceived to have no province but that of finding the truth of the innuendoes and the fact of publication; but the libellous nature of that publication, as well as the guilt or innocence of the publication, were considered as exclusively belonging to the court. In a system like that of law, which reasons logically, no one erroneous principle can be introduced, without producing every other that can be deducible from it. If in the premises of any argument you admit one erroneous proposition, nothing but bad reasoning can save the conclusion from falsehood. So it has

* Alluding to the number of courts martial. Martial law had put down all other law.

been with this encroachment of the court upon the province of the jury with respect to libels. The moment the court assumed, as a principle, that they, the court, were to decide upon every thing but the publication; that is, they were to decide upon the question of libel or no libel, and upon the guilt or innocence of the intention, which must form the essence of every crime, the guilt or innocence must of necessity have ceased to be material. You see, gentlemen, clearly, that the question of intention is a mere question of fact. Now the moment the court determined that the jury was not to try that question, it followed of necessity that it was not tried at all; for the court cannot try a question of fact. When the court said that it was not triable, there was no way of fortifying that extraordinary proposition, except by asserting that it was not material. The same erroneous reasoning carried them another step, still more mischievous and unjust: if the intention had been material, it must have been decided upon as a mere fact under all its circumstances. Of these circumstances the meanest understanding can see, that the leading one must be the truth or falsehood of the publication; but having decided the intention to be immaterial, it followed that the truth must be equally immaterial—and under the law so distorted, any man in England who published the most undeniable truth, and with the purest intention, might be punished for a crime in the most ignominious manner, without imposing on the prosecutor the necessity of proving his guilt, or getting any opportunity of showing his innocence.

I am not in the habit of speaking of legal institutions with disrespect; but I am warranted in condemning that usurpation upon the rights of juries, by the authority of that statute by which your jurisdiction is restored. For that restitution of justice, the British subject is indebted to the splendid exertions of Mr. Fox and Mr. Erskine, those distinguished supporters of the constitution and of the law; and I am happy to say to you, that though we can claim no share in the

glory they have so justly acquired, we have the full benefit of their success ; for you are now sitting under a similar act passed in this country, which makes it your duty and your right to decide upon the entire question, upon its broadest grounds, and under all its circumstances, and of course to determine, by your verdict, whether this publication be a false and scandalous libel : false in fact, and published with the seditious purpose alleged, of bringing the government into scandal, and instigating the people to insurrection.

Having stated to you, gentlemen, the great and exclusive extent of your jurisdiction, I shall beg leave to suggest to you a distinction that will strike you at first sight ; and that is, the distinction between public animadversions upon the character of private individuals, and those which are written upon measures of government, and the persons who conduct them. The former may be called *personal*, and the latter *political* publications. No two things can be more different in their nature, nor in the point of view in which they are to be looked on by a jury. The criminality of a mere personal libel consists in this, that it tends to a breach of the peace ; it tends to all the vindictive paroxysms of exasperated vanity, or to the deeper and more deadly vengeance of irritated pride. The truth is, few men see at once that they cannot be hurt so much as they think by the mere battery of a newspaper. They do not reflect that every character has a natural station, from which it cannot be effectually degraded, and beyond which it cannot be raised by the bawlings of a news hawker. If it is wantonly aspersed, it is but for a season, and that a short one, when it emerges like the moon from behind a passing cloud to its original brightness. It is right, however, that the law, and that *you*, should hold the strictest hand over this kind of public animadversion, that forces humility and innocence from their retreat into the glare of public view ; that wounds and terrifies ; that destroys the cordiality and peace of domestic life ; and that, without

eradicating a single vice, or a single folly, plants a thousand thorns in the human heart.*

In cases of that kind, I perfectly agree with the law as stated from the bench; in such cases I hesitate not to think, that the truth of a charge ought not to justify its publication. If a private man is charged with a crime, he ought to be prosecuted in a court of justice, where he may be punished if it is true, and the accuser if it is false; but far differently do I deem of the freedom of political publication. The salutary restraint of the former species, which I talked of, is found in the general law of all societies whatever; but the more enlarged freedom of the press, for which I contend in political publication, I conceive to be founded in the peculiar nature of the British constitution, and to follow directly from the contract on which the British government hath been placed by the revolution. By the British constitution, the power of the state is a trust, committed by the people, upon certain conditions, by the violation of which, it may be abdicated by those who hold, and resumed by those who conferred it. The real security, therefore, of the British sceptre is, the sentiment and opinion of the PEOPLE, and it is consequently *their* duty to observe the conduct of the government; and it is the privilege of every man, to give them full and just information upon that important subject. Hence the liberty of the press is inseparably twined with the liberty of the people. The press is the great public monitor; its

* Here is a most important admonition, beautifully expressed. The *liberty of the press* is a great blessing, but the *licentiousness of the press* is a great evil, whichever yet has been the greatest enemy of liberty. *Newspaper* printers, in particular, besides a constant attention to the golden rule of "doing unto others as they would that others should do unto them," should read the severe but just strictures of the English critics in the Monthly (London) Magazine, the best literary journal now in Europe—Dr. Millar's excellent observations in his *Retrospective View*, chap. 22. p. 253. &c.—And both parties may take a peep into Mr. Jefferson's speech, or message, on the 4th of March, 1805.

duty is that of the historian and the witness, that "*Nil falsi audeat, nil vere non audeat dicere*," that its horizon shall extend to the farthest verge and limit of truth; that beyond that limit it shall not dare to pass; that it shall speak truth to the king in the hearing of the people, and to the people in the hearing of the king; that it shall not perplex either the one or the other with false alarm, lest it lose its character for veracity, and become an unheeded warner of real danger; lest it should vainly warn them of that sin, of which the inevitable consequence is death. This, gentlemen, is the great privilege upon which you are to decide; and I have detained you the longer, because of the late change of the law, and because of some observations that have been made, which I shall find it necessary to compare with the principles I have now laid down.

And now, gentlemen, let us come to the immediate subject of the trial, as it is brought before you by the charge in the indictment, to which it ought to have been confined; and also, as it is presented to you by the statement of the learned counsel, who has taken a much wider range than the mere limits of the accusation, and has endeavoured to force upon your consideration extraneous and irrelevant facts, for reasons which it is my duty to explain. The indictment states simply, that Mr. Finerty has published a false and scandalous libel upon the lord lieutenant of Ireland, tending to bring his government into disrepute, and to alienate the affections of the people; and one would have expected, that without stating any other matter, the counsel for the crown would have gone directly to the proof of this allegation; but he has not done so; he has gone to a most extraordinary length indeed of preliminary observation, and allusion to facts, and sometimes an assertion of facts, at which I own I was astonished, until I saw the drift of these allusions and assertions. Whether you have been fairly dealt with by him, or are now honestly dealt with by me, you must be judges. He has been pleased to say, that this prosecution is

against this letter signed MARCUS, merely as a part of what he calls a system of attack upon government, by the paper called THE PRESS. As to this, I will only ask you whether you are fairly dealt with? Whether it is fair treatment to men upon their oaths, to insinuate to them, that the general character of a newspaper (and that general character founded merely upon the assertion of the prosecutor) is to have any influence upon their minds, when they are to judge of a particular publication? I will only ask you what men you must be supposed to be, when it is thought that even in a court of justice, with the eyes of the nation upon you, you can be the dupes of that trite and exploded expedient, so scandalous of late, in this country, of raising a vulgar and mercenary cry against whatever man, or whatever principle, it is thought necessary to put down; and I shall therefore merely leave it to your own pride to suggest, upon what foundation it could be hoped, that a senseless clamour of that kind could be echoed back by the yell of a jury upon their oaths. I trust you see that this has nothing to do with the question.

Gentlemen of the jury, other matters have been mentioned, which I must repeat for the same purpose; that of showing you that they have nothing to do with the question. The learned counsel has been pleased to say, that he comes forward in this prosecution as the real advocate for the liberty of the press, and to protect a mild and merciful government from its licentiousness! and he has been pleased to add, that the constitution can never be lost whilst its freedom remains; and that its licentiousness alone can destroy that freedom. As to that, gentlemen, he might as well have said, that there is only one mortal disease of which a man can die; I can die the death inflicted by tyranny; and when he comes forward to extinguish this paper, in the ruin of the printer, by a state prosecution, in order to prevent its dying of licentiousness, you must judge how candidly he is treating you, both in the fact and in the reasoning. Is it in Ireland, gentlemen, that we are told licentiousness is

the only disease that can be mortal to the press? Has he heard of nothing else that has been fatal to the freedom of publication? I know not whether the printer of the Northern Star may have heard of such things in his captivity, but I know that his wife and children are well apprized that a press may be destroyed in the open day, not by its own licentiousness, but by the licentiousness of a *military force*!* As to the sincerity of the declaration, that the state has prosecuted in order to assert the freedom of the press, it starts a train of thought, of melancholy retrospect and direful prospect, to which I did not think the learned counsel would have wished to commit your minds. It leads you naturally to reflect at what times, from what motives, and with what consequences, the government has displayed its patriotism, by these sorts of prosecutions. As to the motives, does history give you a single instance in which the state has been provoked to these conflicts, except by the fear of truth, and by the love of vengeance? Have you ever seen the rulers of any country bring forward a prosecution from motives of filial piety, for libels upon their departed ancestors? Do you read that Elizabeth directed any of those state prosecutions against the libels which the divines of her times had written against her catholic sister; or against the other libels which the same gentlemen had written against her protestant father? No, gentlemen, we read of no such thing; but we know she did bring forward a prosecution from motives of personal resentment, and we know that a jury was found time-serving and mean enough to give a verdict which she was ashamed to carry into effect!

I said, the learned counsel drew you back to the times that have been marked by these miserable conflicts. I see you turn your thoughts to the reign of the second James. I see you turn your eyes to those pages of governmental abandonment, of popular degradation, of expiring liberty, of merci-

* Alluding to the destruction of the Star Printing-Office.

less and sanguinary persecution; to that miserable period, in which the fallen and abject state of man might have been almost an argument in the mouth of the atheist and blasphemer against the existence of an all-just and an all-wise First Cause; if the glorious era of the revolution that followed it had not refuted the impious inference, by showing, that if man descends, it is not in his own proper motion; that it is with labour and with pain, and that he can continue to sink only until by the force and pressure of the descent, the spring of his immortal faculties acquires that recuperative energy and effort that hurries him as many miles aloft—he sinks but to rise again. It is at that period that the state seeks for shelter in the destruction of the press; it is in a period like that, that the tyrant prepares for the attack upon the people, by destroying the liberty of the press; by taking away that shield of wisdom and of virtue, behind which the people are invulnerable, in whose pure and polished convex, ere the lifted blow has fallen, he beholds his own image, and is turned into stone. It is at those periods that the honest man dares not speak, because truth is too dreadful to be told; it is then humanity has no ears, because humanity has no tongue. It is then the proud man scorns to speak, but like a physician baffled by the wayward excesses of a dying patient, retires indignantly from the bed of an unhappy wretch, whose ear is too fastidious to bear the sound of wholesome advice, whose palate is too debauched to bear the salutary bitter of the medicine that might redeem him; and therefore leaves him to the felonious piety of the slaves that talk to him of life, and strip him before he is cold.

I do not care, gentlemen, to exhaust too much of your attention, by following this subject through the last century with much minuteness; but the facts are too recent in your mind not to show you, that the liberty of the press, and the liberty of the people, sink and rise together; that the liberty of speaking, and the liberty of acting, have shared exactly the same fate. You must have observed in England, that

their fate has been the same in the successive vicissitudes of their late depression; and sorry am I to add, that this country has exhibited a melancholy proof of their inseparable destiny, through the various and further stages of deterioration down to the period of their final extinction; when the constitution has given place to the sword, and the only printer in Ireland who dares to speak for the people is now in the dock.

Gentlemen, the learned counsel has made the real subject of this prosecution so small a part of his statement, and has led you into so wide a range, certainly as unnecessary to the object as inapplicable to the subject of this prosecution, that, I trust, you will think me excusable in somewhat following his example. Glad am I to find that I have the authority of the same example, for coming at last to the subject of this trial. I agree with the learned counsel, that the charge made against the lord lieutenant of Ireland is that of having grossly and inhumanly abused the royal prerogative of mercy, of which the king is only the trustee for the benefit of the people. The facts are not controverted. It has been asserted, that their truth or falsehood is indifferent, and they are shortly these, as they appear in this publication.

William Orr was indicted for having administered the oath of a *United Irishman*. Every man now knows what that oath is; that it is simply an engagement first to promote a brotherhood of affection among men of all religious distinctions; secondly, to labour for the attainment of a parliamentary reform; and thirdly, an obligation of secrecy, which was added to it when the convention law made it criminal and punishable to meet by any public delegation for that purpose. After remaining upwards of a year in gaol, Mr. Orr was brought to his trial; was prosecuted by the state; was sworn against by a common informer by the name of Wheatly, who himself had taken the obligation, and was convicted under the insurrection act which makes the administering such an oath felony of death. The jury re-

commended Mr. Orr to mercy; the judge, with a humanity becoming his character, transmitted the recommendation to the noble prosecutor in this case. Three of the jurors made solemn affidavit in court, that liquor had been conveyed into their box; that they were brutally threatened by some of their fellow jurors with prosecution if they did not find the prisoner guilty; and that under the impression of those threats, and worn down by watching and intoxication, they had given a verdict of guilty against him, though they believed him in their conscience to be innocent. That further inquiries were made, which ended in a discovery of the infamous life and character of the informer; and that a respite was therefore sent once, and twice, and thrice, to give time, as Mr. Attorney-General has stated, to see whether mercy *could be* extended to him or not; and that with a knowledge of all these circumstances, his *excellency* did finally determine, that mercy *should not* be extended to him, and that he was accordingly executed upon the verdict. Of this publication, which the indictment charges to be false and seditious, Mr. Attorney-General is pleased to say, that the design of it is to bring the courts of justice into contempt. As to this point of fact, gentlemen, I beg to set you right.

To the administration of justice, so far as it relates to the judges, this publication has not even an allusion in any part mentioned in this indictment. It relates to a department of justice that cannot begin until the duty of the judge is closed. Sorry should I be, that with respect to this unfortunate man, any censure should be flung on those judges who presided at this trial, with the mildness and temper that became them, upon so awful an occasion as the trial of life and death. Sure am I, that if they had been charged with inhumanity or injustice, and if they had condescended at all to prosecute the reviler, they would not have come forward in the face of the public to say, as has been said this day, that it was immaterial whether the charge was true.

or not. Sure I am, their first object would have been to show that it was false, and readily should I have been an eye-witness of the fact, to have discharged the debt of ancient friendship, of private respect, and of public duty, and upon my oath, to have repelled the falsehood of such an imputation. Upon this subject, gentlemen, the presence of those venerable judges restrains what I might otherwise have said; nor should I have named them at all, if I had not been forced to do so, and merely to undeceive you if you have been made to believe their characters to have any community of cause whatever with the lord lieutenant of Ireland. To *him* alone it is confined, and against *him* the charge is made, as strongly, I suppose, as the writer could find words to express it, "that the viceroy of Ireland has cruelly abused the prerogative of royal mercy, in suffering a man, under such circumstances, to perish like a common malefactor." For this Mr. Attorney-General calls for your conviction as a false and scandalous libel, and after stating himself every fact that I have repeated to you, either from his statement or from the evidence, he tells you that you ought to find it false, though he almost in words admits that it is not false, and has resisted the admission of the evidence by which he offered to prove every word of it to be true.

And here, gentlemen, give me leave to remind you of the parties before you. The traverser is a printer, who follows that profession for bread, and who, at a time of great public misery and terror, when the people are restrained by law from debating under any delegated form—when the few constituents that we have are prevented by force from meeting in their own persons, to deliberate or to petition—when every other newspaper in Ireland is put down by force, or purchased by the administration—(though here, gentlemen, perhaps I ought to beg your pardon for stating without authority—I recollect, when we attempted to examine as to the num-

ber of newspapers in the pay of the castle,* that the evidence was objected to)—at a season like this, Mr. Finerty has had the courage, perhaps the folly, to print the publication in question, from no motive under Heaven of malice or vengeance, but in the mere duty which he owes to his family and to the public. His prosecutor is the king's minister in Ireland. In that character, does the learned gentlemen mean to say, that his conduct is not a fair subject of public observation? Where does he find his authority for that, in the law or practice of the sister country? Have the virtues, or the exalted station, or the general love of his people, preserved the sacred person even of the royal master of the prosecutor from the asperity and intemperance of public censure, unfounded as it ever must be, with any personal respect to his majesty, justice, or truth? Have the gigantic abilities of Mr. Pitt, have the more gigantic talents of his great antagonist, Mr. Fox, protected either of them from the insolent familiarity, and, for aught I know, the injustice with which writers have treated them? What latitude of invective has the king's minister escaped, upon the subject of the present war? Is there an epithet of contumely or of reproach, that hatred or that fancy could suggest, that are not publicly lavished upon him? Do you not find the words, "advocate of despotism—robber of the public treasure—murderer of the king's subjects—debaucher of the public morality—degrader of the constitution—tarnisher of the British empire," by frequency of use, lose all meaning whatsoever, and dwindling into terms, not of any peculiar reproach, but of ordinary appellation? And why, gentlemen, is this permitted in that country? I'll tell you why: because, in that country, they are yet wise enough to see that the measures of the state are the proper subjects for the freedom of the press;

* In England, many of the newspapers are in the actual pay of government, and the king's attorney-general keeps the rod of prosecution constantly over the heads of all the others. Latterly, in Ireland, those papers that could not be bought, were put down by the bayonet.

that the principles relating to *personal* slander do not apply to rulers or to ministers; that to publish an attack upon a *public* minister, without any regard to truth, but merely because of its tendency to a breach of the peace, would be ridiculous in the extreme. What breach of the peace, gentlemen, I pray you, is it in such a case? Is it the tendency of such publications to provoke Mr. Pitt, or Mr. Dundas, to break the head of the writer, if they should happen to meet him? No, gentlemen, in that country this freedom is exercised, because the people feel it to be their right; and it is wisely suffered to pass by the state, from a consciousness that it would be in vain to oppose it; a consciousness confirmed by the event of every incautious experiment. It is suffered to pass, from a conviction, that in a court of justice, at least, the bulwarks of the constitution will not be surrendered to the state, and that the intended victim, whether clothed in the humble guise of honest industry, or decked in the honours of genius, and virtue, and philosophy, whether a Hardy, or a Tooke,* will find certain protection in the honesty and spirit of an English jury.

But, gentlemen, I suppose Mr. Attorney will scarcely wish to carry his doctrine altogether so far. Indeed, I remember, he declared himself a most zealous advocate for the liberty of the press. I may, therefore, even according to him, presume to make some observations on the conduct of the existing government. I should wish to know how far he supposes it to extend; is it to the composition of lampoons and madrigals, to be sung down the grates by ragged ballad-mongers, to kitchen-maids and footmen? I will not suppose that he means to confine it to those ebullitions of Billingsgate, to those cataracts of ribaldry and scurrility, that are daily spouting upon the miseries of our wretched fellow-sufferers, and the unavailing efforts of those who have vainly laboured in their cause. I will not suppose that he con-

* See these trials, so honourable to the independence of English juries, and to the abilities of Mr. Erskine, Mr. Horne Tooke, &c.

fines it to the poetic license of a birth-day ode; the laureat would not use such language! in which case I do entirely agree with him, that the truth or the falsehood is as perfectly immaterial to the law, as it is to the laureat, as perfectly unrestrained by the law of the land, as it is by any law of decency, or shame, or modesty, or decorum. But as to the privilege of censure or blame, I am sorry that the learned gentleman has not favoured you with *his* notion of the liberty of the press. Suppose an Irish viceroy acts "a very little absurdly"—may the press venture to be "respectfully comical upon that absurdity?" The learned counsel does not, at least in terms, give a negative to that. But, let me treat you honestly, and go further to a more material point: Suppose an Irish viceroy does an act that brings scandal upon his master; that fills the mind of a reasonable man with the fear of approaching despotism, that leaves no hope to the people of preserving themselves and their children from chains, but in common confederacy for common safety. What is that honest man in that case to do? I am sorry the right honourable "advocate for the liberty of the press" has not told you his opinion, at least, in any express words. I will, therefore, venture to give you my humbler thought upon the subject.

I think an honest man ought to tell the people frankly and boldly of their peril; and, I must say, I can imagine no villany greater than that of his holding a traitorous silence at such a crisis, except the villany and baseness of prosecuting him, or of finding him guilty for such an honest discharge of his public duty. And I found myself on the known principle of the revolution of England, namely, that the crown itself may be abdicated by certain abuses of the trust reposed, and that there are possible excesses of arbitrary power, which it is not only the right, but the bounden duty of every honest man to resist, at the risk of his fortune and his life. Now, gentlemen, if this reasoning be admitted, and it cannot be denied, if there be any possible event in which the people

are obliged to look only to themselves, and are justified in doing so, can you be so absurd as to say that it is lawful to the people to act upon it, when it unfortunately does arrive, but that it is criminal in any man to tell them that the miserable event has actually arrived, or is imminently approaching? Far am I, gentlemen, from insinuating that (extreme as it is) our misery has been matured into any deplorable crisis of this kind, from which, I pray that the Almighty God may for ever preserve us. But I am putting my principle upon the strongest ground, and most favourable to my opponents, namely, that it never can be criminal to say any thing of the government but what is false; and I put this in the extreme, in order to demonstrate to you, *à fortiori*, that the privilege of speaking truth to the people, which holds in the last extremity, must also obtain in every stage of inferior importance; and that, however a court may have decided before the late act, that the truth was immaterial in case of libel, since that act, no honest jury can be governed by such a principle.

Be pleased now, gentlemen, to consider the grounds upon which this publication is called a libel, and criminal. Mr. Attorney tells you, it tends to excite sedition and insurrection. Let me again remind you that the truth of this charge is not denied by the noble prosecutor. What is it, then, that tends to excite sedition and insurrection? "The act that is charged upon the prosecutor, and is not attempted to be denied." And gracious God! gentlemen of the jury, is the public statement of the king's representative this? "I have done a deed that must fill the mind of every feeling or thinking man with horror and indignation, that must alienate every man that knows it, from the king's government, and endanger the separation of this distracted empire; the traverser has had the guilt of publishing this fact, which I myself acknowledge, and I pray you to find him guilty." Is this the case which the lord lieutenant of Ireland brings forward? Is this the principle for which he ventures at a

dreadful crisis like the present, to contend in a court of justice? Is this the picture which he wishes to hold out of himself, to the justice and humanity of his own countrymen? Is this the history which he wishes to be read by the poor Irishman of the south and of the north, by the sister nation, and by the common enemy.

With the profoundest respect, permit me humbly to defend his excellency, even against his own opinion. The guilt of this publication, he is pleased to think, consists in this, that it tends to insurrection. Upon what can such a fear be supported? After the multitudes which have perished in this unhappy nation, within the last three years, and which has been borne with a patience unparalleled in the story of nations, can any man suppose that the fate of a single individual could lead to resistance or insurrection? But, suppose that it might, what ought to be the conduct of an honest man? Should it not be, to apprize the government and the country of the approaching danger? Should it not be, to say to the viceroy, "You will drive the people to madness, if you persevere in such bloody councils, you will alienate the Irish nation, you will distract the common force, and you will invite the common enemy." Should not an honest man say to the people, "the measure of your affliction is great, but you need not resort for remedy to any desperate expedients. If the king's minister is defective in humanity or wisdom, his royal master, and your beloved sovereign, is abounding in both." At such a moment can you be so senseless as not to feel that any one of you ought to hold such language; or, is it possible you could be so infatuated, as to punish the man who was honest enough to hold it? Or, is it possible that you could bring yourselves to say to your country, that, at such a season, the press ought to sleep upon its post, or to act like the perfidious watchman on his round, that sees the villain wrenching the door, or the flames bursting from the windows, while the inhabitant is

wrapt in sleep, and cries out, "past five o'clock, the morning is fair, and all well!"

On this part of the case, I shall only put one question to you. I do not affect to say it is similar in all its points; I do not affect to compare the humble fortunes of Orr with the sainted names of Russel or of Sydney; still less am I willing to draw a likeness between the present period and the year 1688. But, I will put a question to you completely parallel in principle. When that unhappy and misguided monarch had shed the sacred blood, which their noble hearts had matured into a fit cement of revolution—if any honest Englishman had been brought to trial for daring to proclaim to the world his abhorrence of such a deed, what would *you* have thought of the English jury that could have said, "We know in our hearts that what he said was true and honest; but we will say upon our oaths, that it was false and criminal; and we will, by that base subserviency, add another item to the catalogue of public wrongs, and another argument for the necessity of an appeal to Heaven for redress!"

Gentlemen, I am perfectly aware that what I say may be easily misconstrued, but if you listen to me with the same fairness that I address you, I cannot be misunderstood. When I show you the full extent of your political rights and remedies; when I answer those slanderers of British liberty, who degrade the monarch into a despot, who degrade the steadfastness of law into the waywardness of will; when I show you the inestimable stores of political wealth so dearly acquired by our ancestors, and so solemnly bequeathed; and when I show you how much of that precious inheritance has yet survived all the prodigality of their posterity, I am far from saying that I stand in need of it all upon the present occasion. No, gentlemen, far indeed am I from such a sentiment. No man more deeply than myself, deploras the present melancholy state of our unhappy country. Neither does any man more fervently wish for the return of peace

and tranquillity, through the natural channels of mercy and of justice. I have seen too much of force and of violence, to hope much good from the continuance of them on one side, or retaliation from another. I have seen too much of late of political rebuilding, not to have observed that to demolish is not the shortest way to repair. It is with pain and anguish that I should search for the miserable right of breaking ancient ties, or going in quest of new relations or untried adventures. No, gentlemen, the case of my client rests not upon these sad privileges of despair. I trust that as to the fact, namely, the intention of exciting insurrection, you must see it cannot be found in this publication, that it is the mere idle, unsupported imputation of malice, or panic, or falsehood. And that as to the law, so far has he been from transgressing the limits of the constitution, that whole regions lie between him and those limits which he has not trod, and which, I pray to Heaven, it may never be necessary for any of us to tread.

Gentlemen, Mr. Attorney-General has been pleased to open another battery upon this publication, which I do trust I shall silence, unless I flatter myself too much in supposing that hitherto my resistance has not been utterly unsuccessful. He abuses it for the foul and insolent familiarity of its address. I do clearly understand his idea; he considers the freedom of the press to be the license of offering that paltry adulation which no man ought to stoop to utter or to hear; he supposes the freedom of the press ought to be like the freedom of a *king's jester*, who, instead of reproving the faults of which majesty ought to be ashamed, is base and cunning enough, under the mask of servile and adulatory censure, to stroke down and pamper those vices of which it is foolish enough to be vain. He would not have the press presume to tell the viceroy, that the prerogative of mercy is a trust for the benefit of the subject, and not a gaudy feather stuck in the diadem, to shake in the wind, and by waving of the gaudy plumage to amuse the vanity of the

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wearer. He would not have it say to him, that the discretion of the crown as to *mercy*, is like the discretion of a court of justice as to *law*, and that in the one case, as well as the other, wherever the propriety of the exercise of it appears, it is equally a matter of right. He would have the press all fierceness to the people, and all sycophancy to power; he would have it considered the mad and phrenetic depopulations of authority, like the awful and inscrutable dispensations of Providence, and say to the unfeeling and despotic spoiler in the blasphemed and insulting language of religious resignation, "the Lord hath given, and the Lord hath taken away, blessed be the name of the Lord!"

But let me condense the generality of the learned gentleman's invective into questions that you can conceive. Does he mean that the air of this publication is rustic and uncourtly? Does he mean, that when Marcus presumed to ascend the steps of the castle, and to address the viceroy, he did not turn out his toes as he ought to have done? But, gentlemen you are not a jury of dancing masters. Or does the learned gentleman mean that the language is coarse and vulgar? If this be his complaint, my client has but a poor advocate. I do not pretend to be a mighty grammarian, or a formidable critic; but I would beg leave to suggest to you in serious humility, that a **FREE PRESS** can be supported only by the ardour of men who feel the prompting sting of real or supposed capacity; who write from the enthusiasm of virtue, or the ambition of praise, and over whom, if you exercise the rigour of grammatical censorship, you will inspire them with as mean an opinion of your integrity as your wisdom, and inevitably drive them from their post—and if you do, rely upon it, you will reduce the spirit of publication, and with it the press of this country, to what it for a long interval has been, the register of births, and fairs, and funerals, and the general abuse of the people and their friends.

But, gentlemen, in order to bring this charge of insolence and vulgarity to the test, let me ask you, whether you know of any language which could have adequately described the idea of mercy denied where it ought to have been granted, or of any phrase vigorous enough to convey the indignation which an honest man would have felt upon such a subject? Let me beg of you for a moment to suppose, that any one of you had been the writer of this very severe expostulation with the viceroy, and that you had been the witness of the whole progress of this never to be forgotten catastrophe. Let me suppose that you had known the charge upon which Mr. Orr was apprehended, the charge of abjuring that bigotry which had torn and disgraced his country, of pledging himself to restore the people of his country to their place in the constitution, and of binding himself never to be the betrayer of his fellow-labourers in that enterprise; that you had seen him upon that charge removed from his industry and confined in a gaol; that through the slow and lingering progress of twelve tedious months, you had seen him confined in a dungeon, shut out from the common use of air and of his own limbs; that day after day you had marked the unhappy captive, cheered by no sound but the cries of his family, or the clanking of his chains; that you had seen him at last brought to his trial; that you had seen the vile and perjured informer deposing against his life; that you had seen the drunken, and worn out, and terrified jury give in a verdict of death; that you had seen the same jury, when their returning sobriety had brought back their consciences, prostrate themselves before the humanity of the bench, and pray that the mercy of the crown might save their characters from the reproach of an involuntary crime, their consciences from the torture of eternal self-condemnation, and their souls from the indelible stain of innocent blood.

Let me suppose that you had seen the respite given, and that contrite and honest recommendation transmitted to that seat where mercy was presumed to dwell; that new and

before unheard of crimes are discovered against the informer; that the royal mercy seems to relent, and that a new respite is sent to the prisoner; that time is taken, as the learned counsel for the crown has expressed it, to see whether mercy *could* be extended or not!—that after that period of lingering deliberation passed, a third respite is transmitted; that the unhappy captive himself feels the cheering hope of being restored to a family that he had adored, to a character that he had never stained, and to a country that he had ever loved; that you had seen his wife and children upon their knees, giving those tears to gratitude, which their locked and frozen hearts could not give to anguish and despair, and imploring the blessings of Eternal Providence upon his head who had graciously spared the father, and restored him to his children; that you had seen the olive branch sent in to his little ark, but no sign that the waters had subsided—“Alas! nor wife, nor children more shall he behold, nor friends, nor sacred home!” No seraph mercy unbars his dungeon, and leads him forth to light and life, but the minister of death hurries him to the scene of suffering and of shame; where, unmoved by the hostile array of artillery and armed men collected together, to secure or to insult, or to disturb him, he dies with a solemn declaration of his innocence, and utters his last breath in a prayer for the liberty of his country!—Let me now ask you, if any of you had addressed the public ear upon so foul and monstrous a subject, in what language would you have conveyed the feelings of horror and indignation? Would you have stooped to the meanness of qualified complaint? Would have been mean enough—but I entreat your forgiveness—I do not think meanly of you; had I thought so meanly of you, I could not suffer my mind to commune with you as it has done; had I thought you that base and vile instrument, attuned by hope and by fear into discord and falsehood, from whose vulgar string no groan of suffering could vibrate, no voice of integrity or honour could speak; let me honestly

tell you I should have scorned to fling my hand across it, I should have left it to a fitter minstrel; if I do not therefore grossly err in my opinion of you, I could use no language upon such a subject as this, that must not lag behind the rapidity of your feelings, and that would not disgrace those feelings, if it attempted to describe them.

Gentlemen, I am not unconscious that the learned counsel for the crown seemed to address you with a confidence of a very different kind; he seemed to expect a kind and respectful sympathy from you with the feelings of the castle, and the griefs of chided authority. Perhaps, gentlemen, he may know you better than I do; if he does, he has spoken to you as he ought; he has been right in telling you that if the reprobation of this writer is weak, it is because his genius could not make it stronger; he has been right in telling you that his language has not been braided and festooned as elegantly as it might; that he has not pinched the miserable plaits of his phraseology, nor placed his patches and feathers with that correctness of millinery which became so exalted a person. If you agree with him, gentlemen of the jury, if you think that the man who ventures at the hazard of his own life, to rescue from the deep, "the drowned honour of his country," must not presume upon the guilty familiarity of plucking it up by the locks, I have no more to say—do a courteous thing—upright and honest jurors, find a civil and obliging verdict against the printer!—And when you have done so, march through the ranks of your fellow-citizens to your own homes, and bear their looks as ye pass along: retire to the bosom of your families and your children, and when you are presiding over the morality of the parental board, tell those infants who are to be the future men of Ireland, the history of this day. Form their young minds by your precepts, and confirm those precepts by your own example; teach them how discreetly allegiance may be perjured on the table, or loyalty be foresworn in the jury-box—and when you have done so, tell them the story of *Orr*; tell them of his

captivity, of his children, of his hopes, of his disappointments, of his courage, and of his death; and when you find your little hearers hanging upon your lips, when you see their eyes overflow with sympathy and sorrow; and their young hearts bursting with the pangs of anticipated orphanage, tell them that you had the boldness, and the injustice, to stigmatize the man who had dared to publish the transaction!

Gentlemen, I believe I told you before that the conduct of the viceroy was a small part indeed of the subject of this trial. If the vindication of his mere personal character had been, as it ought to have been, the sole object of this prosecution, I should have felt the most respectful regret at seeing a person of his high consideration come forward in a court of public justice, in one and the same breath, to admit the truth, and to demand the punishment of a publication like the present; to prevent the chance he might have had of such an accusation being disbelieved, and by a prosecution like this to give to the passing stricture of a newspaper that life, and body, and action, and reality, that proves it to all mankind, and makes the record of it indelible. Even as it is, I do own I feel the utmost concern that his name should have been soiled by being mixed in a question of which it is the mere pretext and scape-goat. Mr. Attorney was too wise to state to you the real question, or the object which he wished to be answered by your verdict. Do you remember that he was pleased to say, that this publication was a base and foul misrepresentation of the virtue and wisdom of the government, and a false, audacious statement to the world, that the king's government in Ireland was base enough to pay informers for taking away the lives of the people. When I heard this statement to-day, I doubted whether you were aware of its tendency or not. It is now necessary that I should explain it to you more at large.

You cannot be ignorant of the great conflict between prerogative and privilege which hath convulsed the country for the last fifteen years; when I say privilege, you cannot sup-

pose that I mean the privileges of the house of commons; I mean the privileges of the people. You are no strangers to the various modes by which the people laboured to approach their object. Delegations, conventions, remonstrances resolutions, petitions to the parliament, petitions to the throne. It might not be decorous in this place, to state to you with any sharpness, the various modes of resistance that were employed on the other side; but you, all of you, seem old enough to remember the variety of acts of parliament that have been made, by which the people were deprived, session after session, of what they had supposed to be the known and established fundamentals of the constitution; the right of public debate, the right of public petition, the right of bail, the right of trial, the right of arms for self-defence; until at last, even the relics of popular privilege became superseded by military force; the press extinguished; and the state found its last entrenchment in the grave of the constitution. As little can you be strangers to the tremendous confederations of hundreds, of thousands of our countrymen, of the nature and the objects of which such a variety of opinions have been propagated and entertained.

The writer of this letter has presumed to censure the recall of Lord Fitzwilliam, as well as the measures of the present viceroy. Into this subject I do not enter; but you cannot, yourselves forget, that the conciliatory measures of the former noble lord had produced an almost miraculous unanimity in this country; and much do I regret, and sure I am, that it is not without pain you can reflect, how unfortunately the conduct of his successor has terminated. His intentions might have been the best; I neither know them nor condemn them, but their terrible effects you cannot be blind to. Every new act of coercion has been followed by some new symptom of discontent, and every new attack provoked some new paroxysm of resentment, or some new combination of resistance. In this deplorable state of affairs, convulsed and distracted within, and menaced by a most formidable enemy from with-

out, it was thought that public safety might be found in union and conciliation, and repeated applications were made to the parliament of this kingdom for a calm inquiry into the complaints of the people; these applications were made in vain. Impressed by the same motives, Mr. Fox brought the same subject before the commons of England, and ventured to ascribe the perilous state of Ireland to the severity of its government. Even his stupendous abilities, excited by the liveliest sympathy with our sufferings, and animated by the most ardent zeal to restore the strength with the union of the empire, were repeatedly exerted without success. The fact of discontent was denied; the fact of coercion was denied; and the consequence was, the coercion became more inplacable, and the discontent more threatening and irreconcilable. A similar application was made in the beginning of this session in the peers of Great Britain, by our illustrious countryman, Lord Moira, of whom I do not wonder that my learned friend should have observed; how much virtue can fling pedigree into the shade; or how much the transient honour of a body inherited from man, is obscured by the lustre of an intellect derived from God. He, after being an eye-witness of this country, presented the miserable picture of what he had seen, and, to the astonishment of every man in Ireland, the existence of those facts was ventured to be denied; the conduct of the present viceroy was justified and applauded; and the necessity of continuing that conduct was insisted upon, as the only means of preserving the constitution, the peace, and the prosperity of Ireland. The moment the learned counsel had talked of this publication as a false statement of the conduct of the government and the condition of the people, no man could be at a loss to see that that awful question which had been dismissed from the commons of Ireland, and from the lords and commons of Great Britain, is now brought forward to be tried by a sidewind, and in a collateral way, by a criminal prosecution.

I tell you, therefore, gentlemen of the jury, it is not with respect to Mr. Orr that your verdict is now sought; you are

called upon on your oaths to say that the government is wise and merciful, that the people are prosperous and happy, that military law ought to be continued, that the British constitution could not with safety be restored to this country, and that the statements of a contrary import by your advocates in either country were libellous and false. I tell you these are the questions, and I ask you, can you have the front to give the expected answer in the face of a community who know the country as well as you do? Let me ask you, how could you reconcile with such a verdict the gaols, the tenders, the gibbets, the conflagrations, the murders, the proclamations, that we hear of every day in the streets, and see every day in the country! What are the processions of the learned counsel himself, circuit after circuit? Merciful God, what is the state of Ireland, and where shall you find the wretched inhabitant of this land! You may find him perhaps in a gaol, the only place of security, I had almost said, of ordinary habitation; you may see him flying by the conflagrations of his own dwelling; or you may find his bones bleaching on the green fields of his country; or he may be found tossing upon the surface of the ocean, and mingling his groans with those tempests less savage than his persecutors that drift him to a returnless distance from his family and his home. And yet, with these facts ringing in the ears, and staring in the face of the prosecutor, you are called upon to say, on your oaths, that these facts do not exist! You are called upon in defiance of shame, of truth, of honour, to deny the sufferings under which you groan, and to flatter the persecution which tramples you under foot!

But the learned gentleman is further pleased to say, that the traverser has charged the government with the encouragement of informers. This, gentlemen, is another small fact that you are to deny at the hazard of your souls, and upon the solemnity of your oaths. You are upon your oaths to say to the sister country, that the government of Ireland uses no such abominable instruments of destruction as in-

formers. Let me ask you honestly, what do you feel, when in my hearing, when in the face of this audience, you are called upon to give a verdict that every man of us, and every man of you, know by the testimony of your own eyes to be utterly and absolutely false? I speak not now of the public proclamation of informers, with a promise of secrecy and of extravagant reward; I speak not of the fate of those horrid wretches who have been so often transferred from the table to the dock, and from the dock to the pillory; I speak of what your own eyes have seen day after day during the course of this commission, from the box where you are now sitting; the number of horrid miscreants, who avowed upon their oaths, that they had come from the very seat of government—from the castle, where they had been worked upon by the fear of death and the hopes of compensation, to give evidence against their fellows, that the mild and wholesome councils of this government are holden over these catacombs of living death, where the wretch that is buried a man, lies till his heart has time to fester and dissolve, and is then dug up a witness.

Is this fancy, or is it fact? Have you not seen him after his resurrection from that tomb, after having been dug out of the region of death and corruption, make his appearance upon the table, the living image of life and of death, and the supreme arbiter of both? Have you not marked when he entered how the stormy wave of the multitude retired at his approach? Have you not marked how the human heart bowed to the supremacy of his power, in the undissembled homage of deferential horror? How his glance, like the lightning of Heaven, seemed to rive the body of the accused, and mark it for the grave, while his voice warned the devoted wretch of wo and death; a death which no innocence can escape, no art elude, no force resist, no antidote prevent.* There was an antidote—a juror's oath—but even

* Here is a fine picture of that hateful thing, under a corrupt government,

that adamant chain, that bound the integrity of man to the throne of Eternal Justice, is solved and melted in the breath that issues from the *informer's mouth*—conscience swings from her mooring, and the appalled and affrighted juror consults his own safety in the surrender of the victim :

Et quæ sibi quisque timebat,
Unius in miseri exitium conversa tulere.

Gentlemen, I feel I must have tired your patience, but I have been forced into this length by the prosecutor, who has thought fit to introduce those extraordinary topics, and to bring a question of mere politics to trial, under the form of a criminal prosecution. I cannot say I am surprised that this has been done, or that you should be solicited by the same inducements, and from the same motives, as if your verdict was a vote of approbation. I do not wonder that the government of Ireland should stand appalled at the state to which we are reduced. I wonder not they should start at the public voice, and labour to stifle or contradict it. I wonder not that, at this arduous crisis, when the very existence of the empire is at stake, when its strongest and most precious limb is not girt with the sword for battle, but pressed by the tourniquet for amputation; when they find the coldness of death already begun in those extremities where it never ends, that they are terrified at what they have done, and wish to say to the surviving parties of that empire, "they cannot say that we did it." I wonder not that they should consider their conduct as no immaterial question for a court of criminal jurisdiction, and wish anxiously, as on an inquest of blood, for the kind acquittal of a friendly jury. I wonder not they should wish to close the chasm they have opened by flinging you into the abyss. But trust me, my countrymen, you might perish in it, but you could not close it; trust me, if it is yet possible to close it, it can be done only by truth and

an informer. It may be set in comparison with Milton's description of Sin and Death.

honour; trust me, that such an effect could no more be wrought by the sacrifice of a jury, than by the sacrifice of Orr. As a state measure, the one would be as unwise and unavailing as the other. But while you are yet upon the brink, while you are yet visible, let me, before we part, remind you once more of your awful situation. The law upon this subject gives you supreme dominion. Hope not for much assistance from his lordship. On such occasions perhaps the duty of the court is to be cold and neutral. I cannot but admire the dignity he has supported during this trial; I am grateful for his patience. But let me tell you, it is not *his* province to fan the sacred flame of patriotism in the jury box. As he has borne with the little extravagancies of the law, do you bear with the little failings of the press. Let me therefore remind you, that though the day may soon come when our ashes shall be scattered before the winds of Heaven, the memory of what you do cannot die; it will carry down to your posterity your honour or your shame. In the presence and in the name of that ever living God, I do therefore conjure you to reflect, that you have your characters, your consciences, that you have also the character, perhaps the ultimate destiny, of your country in your hands. In that awful name, I do conjure you to have mercy upon your country and upon yourselves, and so to judge now as you will hereafter be judged; and I do now submit the fate of my client, and of that country which we have yet in common, to your disposal.

Mr. Prime Serjeant replied to Mr. Curran. He said many libellous attacks had been made upon the administration of justice in this country, and upon the government; but it was reserved for the traverser to make a desperate attack upon the temple of justice, profaning its very altars, and reviling its ministers. Notwithstanding the traverser at the bar stood indicted for having printed and published the libel in the indictment, he firmly believed that the traverser was only an instrument in the hands of others. If it was neces-

sary to look for an aggravation of the offence charged upon the traverser, it would be found in the support given him by his counsel, which had consisted of nothing else but the display and pomp of language. Mr. Prime Serjeant then made a few observations on the nature of the offence with which the traverser was charged, and said, if the jury were of his opinion, it was a false, scandalous, and seditious libel, they ought to find him guilty; if, on the contrary, they did not believe that, then, in that case, they ought to find him not guilty.

Mr. Justice Downes charged the jury. He observed that they had been amused by a display of eloquence from the counsel for the traverser, running wide of the matter before them. He would, however, endeavour to point out to them the object for their consideration, divested of all irrelevant matter. There had been no evidence given to show that the publication was innocent. It was not necessary for the counsel for the prosecution to show another intent of the printer and publisher, than what appeared on the face of the paper itself; and if the jury can feel that the intention of the paper was, to state a false, seditious, and malicious libel, it would be sufficient to ground their verdict of guilty. His Lordship then stated to the jury the libel, as it appeared on the record, and said, the question which would be for their consideration would be, whether the traverser at the bar was the printer and publisher of the matter called a libel, and to find the intent with which he published it; and, if the jury found that the traverser had published the paper called a libel, they were then to inquire whether the innuendoes had been well laid, and properly applied in the indictment, and whether it bears the construction imputed to it by the innuendoes; and if the jury were of opinion that he the traverser published it, and that it was a libel, and that the innuendoes had been well laid and properly applied, there could be no doubt on the whole of the case, but that the jury ought to find the traverser guilty.

The jury retired a short time, and then brought in a verdict—GUILTY.

SATURDAY, DEC. 23.

This day, Mr. Finerty was brought up to receive sentence. On his being put to the bar, he addressed the judge nearly as follows :—

My Lord. From the very able defence which has been made for me, I should think it utterly unnecessary to trouble your lordship with any observations of mine, if the language of Mr. Prime Serjeant, in his address to the jury, had not imperiously demanded some reply. It may accord well with the general system of our government, to inflict a severe punishment upon me ; but what end it can answer, to defame and abuse my character, I am at a loss to discover. Among the epithets which the learned counsel so liberally dealt out against me, he was pleased to call me “ the tool of a party.” However humble I may be, my lord, I should spurn the idea of becoming the instrument of any party, or any man—I was influenced solely by my own sense of the situation of the country, and have uniformly acted from that feeling of patriotism, which, I hope, it is not yet considered criminal to indulge ; and I trust the general conduct of THE PRESS has fully evinced to the people that its object was truth, and the good of the nation, unconnected with the views, or unwarped by the prejudices, of any party.

If I would stoop, my lord, to become the tool of a party, I might have easily released myself from prosecution, and this would have been clearly proved, if your lordship had suffered the persons summoned to be examined.

I have been now, my lord, eight weeks in confinement, during which I have experienced the severest rigours of a gaol. The offence was bailable, but it became impossible for me, from the humility of my connections, to procure bail to the amount demanded ; probably had any person stood forward,

he would have been *marked*; and sensible of that, I preferred imprisonment to the exposure of a friend to danger. But not contented with my imprisonment and persecution, it seemed the intention of the agents of government to render me infamous. I was threatened with a species of punishment, to a man educated as I have been in the principles of virtue, and honesty, and manly pride, more terrible than death—a punishment, my lord, which I am too proud to name, and which, were it now to make a part of my sentence, I fear, although I hope I am no coward, I shall not be able to persuade myself to live to meet. By what authority any man could presume to prejudge your lordship's sentence, or anticipate the verdict of a jury, it is not for me to decide. I cannot conceive what sort of solicitude those men entertain for the dignity of the Irish character, or the honour of the government, who thus endeavour to stain it by the multiplication of informers.

With respect to the publication, my lord, which the jury has pronounced a libel, the language of which, undoubtedly, is, in some instances, exceptionable, it was received in the letter-box by my clerk, who generally went to the office earlier than I, and taking it to the printing-office, it was inserted, and the whole impression of the paper worked off, before I saw it; but on remonstrating with the author, he produced to me such documents as put the truth of the statement beyond question; and these documents, my lord, were yesterday in court, and would, combined with the testimony of the witnesses present, if your lordship had permitted their examination, have amply satisfied the jury of the facts. And, heretofore, my lord, I have been taught to think, that truth was, above all things, important; and I never did believe it possible that truth and falsehood were, in any instance, equally guilty; or, that the truth, though it might not altogether acquit, would not so much as extenuate; for, if it would in any degree extenuate the offence, I suppose your lordship would have thought it necessary that it should be heard,

and I, of consequence, conceived the publication of Marcus's letter not alone innocent but praiseworthy, even though it did contain passages which I do not vindicate.

I hope your lordship will take the several circumstances I have stated into consideration. If guilt, my lord, consists in the mind, I solemnly assure you, that I have examined my heart, and find that it perfectly absolves me from all and every criminality of intention; I have only then to inform your lordship, that a heavy fine would be tantamount to perpetual imprisonment, and long imprisonment little short of death; yet whatever punishment you may please to inflict, I trust I have sufficient fortitude arising from my sense of religion, and of the sacred cause for which I suffer, to enable me to bear it with resignation.

Mr. Justice Downes then proceeded to pass sentence upon the prisoner. He told the prisoner he had listened to him with patience; that nothing had fallen from him to induce a mitigation of punishment, except what he had stated of the length of time he had been in confinement, which he would not forget in the sentence; as the time of the imprisonment should commence from the day of the arrest. That with respect to the libel being published without his immediate knowledge, if this were an excuse, which it was not, no evidence of the fact had been laid before the jury. Your sentence is, "that you be imprisoned for two years from the day of your arrest, that you stand in the pillory for one hour, pay a fine of 20*l.* and at the expiration of your confinement, give security, yourself in 500*l.* and two sureties in 250*l.* each, for your good behaviour for seven years."

SATURDAY, DEC. 30.

This day Peter Finerty, pursuant to his sentence, stood one hour in the pillory opposite to the Session-house in Green-street; an immense concourse of people attended the exhibition. Mr. Finerty was accompanied by some respect-

able citizens. He appeared resigned, and upon being released from the restraint of *the governmental engine for securing the liberty of the press*, he addressed the spectators in a few words:—"My friends, you see how cheerfully I can suffer—I can suffer any thing, provided it promotes the liberty of my country!" Upon this the spectators applauded by clapping of hands. Some of the guards, being, we suppose, the *picked men* of the Armagh militia, attacked the unarmed people,—some of the officers also were guilty of similar conduct; others, both officers and privates, acted like gentlemen and soldiers.

COUNSEL for the crown. The Attorney-General, the Solicitor-General, the Prime Serjeant, Messrs. Ridgeway, Townsend, and Worthington; agent, Mr. Kemis.

COUNSEL for the prisoner. Messrs. Curran, Fletcher, McNally, Sampson, Sheares, and Orr; agent, Mr. Dowling.

MR. O'CONNOR'S

ADDRESS TO THE IRISH NATION.

Countrymen,

SINCE the conviction and sentence passed on the printer of *THE PRESS*, a clause has been pointed out by the commissioners of stamps, which lay lurking in one of the late parliament's acts, unknown to the lawyers: whereby, a printer convicted of a libel shall be deprived of his property in the paper in which it had been inserted. By this law, in conformity with all the other acts of parliament, which, in the words of a great and good man, "has taken more from the liberties, and added more to the burdens, of the people," and I may say, stained the statute book with more penal laws, than any parliament that ever yet existed; it has become necessary, that on the spur of the instant, from this unforeseen clause, another proprietor should come forward to save the *IRISH PRESS* from being put down. To perform that sacred office to this best benefactor of mankind, has devolved upon me; and rest assured, I will discharge it with fidelity to you and our country, until some one more versed in the business can be procured.

Every engine of force and corruption has been employed by those ministers, into whose hands, unfortunately for the present peace and future repose of the nation, unlimited power has been invested, to discover whether I was proprietor of the press. Had they sent to me, instead of lavishing your money amongst perjurers, spies, and informers, I would have told them, what I now tell you, that I did set up *THE PRESS*, though, in a legal sense, I was not the proprietor; nor did I look to any remuneration; and I did so, because from the

time that, in violation of property, in subversion of even the appearance of respect for the laws, and to destroy not only the freedom of the press itself, the present ministers demolished the *Northern Star*; no paper in Ireland, either from being bought up, or from the dread and horror of being destroyed, would publish an account of the enormities which these very ministers had been committing; where they not only suffered a lawless banditti of sworn extirpators to destroy the property, to raze the habitations, and to drive thousands of ruined families to the most distant parts of the country, for want of protection; but where the strongest suspicions rested, that they had given encouragement to such diabolical acts, under the name of loyalty, and the mask of religion; where they let loose an excited soldiery, to commit acts of outrage which no invading army of any country in Europe would have practised, without violating those laws established among civilized nations; where the torch had consumed their houses and property in entire districts, and summary murders had been wantonly perpetrated; where thousands have been hurried into those multiplied dungeons, and hundreds sent to the gallows "on suspicion of being suspected"* of reform and union; and above all, where TORTURE has been applied in numerous instances to extort confession, of what, by the insurrection act, has been judged worthy of death, but as I read it, by the strictest rules and injunctions of christian morality, has been enforced as a paramount duty. That torture which our ancestors held in such inveterate abhorrence, that its utter exclusion was esteemed so fundamental a part of our constitutional code, that neither that Stuart, nor his ministers, whose heads paid the forfeit of the crimes they committed, nor the ministers of that Stuart who was expelled, durst introduce it.

I could cite hundreds of facts to substantiate the suppression

* This phrase originated with Robespierre and his bloody associates during the days of terror in Paris.

of the publication of these enormous atrocities; but I will confine myself to the mention of one, which has come within my own knowledge. Whilst I was confined in the tower, the soldiers who were stationed all around it, fired up at the prison; and on being asked why they had fired, without having challenged, or any pretext for so doing, they answered, "that they had acted according to the orders they had got." As I was the only person confined in the prison, no doubt could remain that these orders were issued for the purpose of assassination. A gentleman who had been an eye-witness of the attempt, took a statement of facts to the *Evening Post*, which was at that time esteemed the least corrupted paper in Dublin; but the editor told him that fearing that his house and his press might experience the fate of the *Northern Star*, he would not insert it; although the next day, not only that print, but every other paper in town, contained an account of the transaction, in which there was not one word of truth, except the admission that the shots had been fired!

From the moment I was enlarged from the tower, I determined to free the press from this dastardly thralldom; that the conduct of those ministers might be faithfully published; and whilst a beloved brother is confined in a cell nine feet square,* against every form of law, and the plighted faith of this administration, I take this opportunity to call on Lord Camden, to tell you and the world, what inquiry has been made, or what punishment has been inflicted on the perpetrators of an act, which, if brought home to his administration, must affix a greater stain on his name, than the ever memorable days of September have indelibly left on *Robespierre* and his gang of assassins; whose government was supported by burning of houses, destruction of property, massacring the people, and crowding the galleys and dungeons, but for which he, even *Robespierre*, disdained to

* See Roger O'Connor's letter.

employ torture to extort confessions of patriotism, which this sanguinary usurper punished as treason. Whenever it shall happen, that one or a few base usurpers shall have seized on a nation's civil and political rights; and that they shall have sold them to a neighbouring country, in the rank-est and foulest corruption and treason; whenever it shall happen, that to heal religious dissension, to promote universal philanthropy, true christian charity, and national union, and to establish the imprescriptible right of being represented, which no people can forfeit, shall be punished by legalized murder; trust me, the most drowsy conscience, stung by public exposure, will make every effort by bribery, by violence, and by persecution and robbery, to put down the press. But regarding it as the great luminary which has dispelled the darkness in which mankind lay brutalized in ignorance, superstition, and slavery—regarding it as that bright constellation, which, by its diffusion of light, will at length restore the nations to knowledge and freedom—whilst, therefore, I can find one single plank of the scattered rights of my country to stand on, I will fix my eyes on **THE PRESS**, as the polar-star which is to direct us to the haven of **FREEDOM**.

With these sentiments engraven on my heart; alive to the honest ambition of serving my country; regardless whether I am doomed to fall by the lingering torture of a solitary dungeon, or the blow of the assassin; if the freedom of the press is to be destroyed, I shall esteem it a proud destiny to be buried under its ruins. But, if there be any man so base or so stupid as to imagine that they can usurp or withhold your civil and political rights; that they can convert truth into sedition, or patriotism into treason; if they imagine that this is a period favourable for abridging the freedom of mankind, or establishing despotic power on the ruins of liberty, let them look round them, and they will find, that amongst the old and inveterate despotisms in Europe, some have been destroyed, and the rest are on the brink of destruction. They may make martyrs, and liberty's roots will be fertilized by

the blood of the murdered; but if their deeds and their blunders have not made reflection a horror, let them look back on the five years that are passed, and they will see that they have been the most destructively rapid revolutionists that ever yet existed; they will see that Great Britain and Ireland, from the portion of rights they enjoyed, which were the nations of Europe where revolution was least necessary, and where it might have been most easily saved, are now nearest the danger. But let them reflect ere it is too late, and it is never too late to abandon a ruinous course, that if they could establish *lettres de cachet* in place of *habeas corpus* and trial by jury; if the galleys and bastiles of despotism could be erected in place of the prisons of law; if they could abolish every idea of representation, and establish chambers of registering their requisitions and edicts; if instead of the press of the nation, they could set up the gazette of the court; if they could abolish that great constitutional principle, that no man could be forced to his own crimination, and establish the torture to extort confession; they should recollect, that, like France, instead of preventing a revolution, they would but create so many powerful causes to excite the people to make one;—and whilst tyrannic despots talk so much of supporting the constitution they have done so much to destroy, let them remember, that if it owes much to obedience, it owes more to resistance; and that the feelings of a people must determine where crimes and sufferings shall end the one and begin the other.

ARTHUR O'CONNOR.

THE TRIAL

OF PATRICK FINNEY, FOR HIGH TREASON.

COMMISSION OF OYER AND TERMINER.

ON Tuesday, the 16th of January, 1798, Patrick Finney was put to the bar, and charged with high treason, in compassing the death of the king, and for adhering to the king's enemies, that is, to the persons who exercise the powers of government in France, &c.

ABSTRACT OF THE INDICTMENT.

First count.—That Patrick Finney, yeoman, on the 30th day of April, in the 37th of the king, and divers other days, at the city of Dublin, being a false traitor, did compass and imagine the death of our said lord the king, and did traitorously and feloniously intend our said lord the king to kill, murder, and put to death. To this were added twelve *overt acts*.

The second count, for "adhering to the king's enemies within the realm," was supported by the same number of *overt acts*.

The Attorney-General began, by showing, that the prisoner, Patrick Finney, stood indicted on a charge of high treason, of which there are several species; he stated two as applying to the charge—one was the compassing the death of the king, and the other adhering to the king's enemies.

On the first of these, compassing the death of the king, he stated the meaning of the law. This species of high treason did not alone consist in a direct attack on the king's person; the preservation of his majesty's life depends much on the tranquillity of the state; any attempt, therefore, to interrupt that must affect the safety of the king; as for instance, if war be levied within these realms, the king, as first magistrate, and engaged in the restoration of public tranquillity, must have his life put in danger, and this inference being equally plain, if a direct attack be not made upon his life, there is nevertheless an indirect one; and thus the law construes such levying of war within the realm, a compassing the death of the king.

Mr. Attorney-General here recapitulated the several overt acts laid in the indictment, observing thereon, that if the jury should find any of them satisfactorily proved against the prisoner, and also in the application of the charge of high treason, they would, in such case, find that verdict which a due sense of duty to their king and country would prompt—that the whole of the facts laid in the indictment would be so proved, he was instructed, confidently to expect from the evidence which he would produce; but if, on the contrary, the prisoner should prove innocent, none would participate more in the satisfaction which such an event would excite in the human breast, than the officers of the crown, by whom the prosecution was conducted.

EVIDENCE ON THE PART OF THE CROWN.

James O'Brien deposed, that on the 25th of April last, he met at the door of a public-house in Thomas-street, and in company with the prisoner Finney, a man named Hyland, with whom he was acquainted; that Hyland asked him if he was up? The witness expressing ignorance of what he meant, Hyland said, "It is a wonder, James, you're not up," and

Finney explained it to signify a man's being a United Irishman, and advised him to become one, or he might lose his life before he went half the length of the street, and if he went into the house he should know the particulars; witness accordingly went into the public house, and entered a room where there were ten more persons, one of whom, named Buckley, asked the prisoner, Finney, "if he had caught a bird," adding, that he, O'Brien, should never leave that until made a *christian* of. He was then sworn to secrecy, and also to the constitution oath of the United Irishmen, by Finney and Hyland, in presence and hearing of the prisoner, who told witness that every man rich and poor, who was not a United Irishman, very shortly would lose his life. O'Brien deposed, that he took the oaths from fear of his life. After paying a shilling, said to be for the good of the cause, he was initiated into the signs and words of the society. The Sunday following was appointed to meet at the widow Cochlan's, on the Coombe, where Finney said the witness would be further enlightened. Recollected that there was a printed paper read, which stated among other things, that any placeman, and pensioner, who was not a United Irishman, should lose his life. Being permitted to depart, on his way home, he recollected that persons entering into the societies of defenders, were taken up if discovered; so he determined to inform Mr. Higgins, a magistrate of the Queen's county, of what had passed, and did; he was advised to continue some time in the society; went to the following meeting at Newmarket, on the Coombe, and was admitted on the pass word "Mr. Greene;" at this meeting, much conversation was held about their strength in men and arms—went to the Sheaf of Wheat in Thomas-street, the Sunday after, and was admitted on the pass word "Mr. Flail;" there were sixty persons in the room, having been counted by the prisoner at the bar, who advised a division of them into *splits*, each to consist of twelve; that they were accordingly so subdivided, and to each split there was elected a secretary and cashkeeper; after which,

Finney administered to each of the secretaries and treasurers, an official oath; a man named Cooke, helping each, as sworn, to a glass of punch to *wash it down*. Witness recollects a proposition made at that meeting, for a certain number to go to White's-court, in Ship-street, to No. 48, George's street, and to a stone-cutter's, in the same street, for the purpose of reporting to the next meeting; whether they were suitable places to favour an entrance into the ordnance stores, that the arms and ammunition might be stolen from thence; that the report on this inspection was, an approval of the different places as calculated to facilitate the attempt.

O'Brien deposed, that at the meeting at widow Cochlan's, on the Coombe, it was appointed to attend a funeral from Pimlico, which would be accompanied by 10,000 United Irishmen, who took that method to show government their strength; that at this funeral, Finney was the most active person, and directed the order of marching; that after the funeral much money was collected, and witness saw on the table a great deal of gold, silver, and bank notes, the produce of that collection, and money paid in to Finney from other meetings. At this meeting, Finney read the constitution of the United Irishmen, and a paper, stating, that 111,000 United Irishmen were, in the province of Ulster alone, ready to assist the French on landing in this kingdom. At a meeting in Meath-street, witness deposed, it was proposed to put out the eyes, and cut off the tongues and hands of any person suspected of giving information to government against United Irishmen, and to assassinate those of whom such could be ascertained; that it was at this meeting, the guard arrived, by witness's direction, to arrest the society, but that Finney, having possessed himself of the papers of the meeting, made his escape. Here the witness's direct examination closed.

Mr. Curran cross-examined O'Brien, from which it appeared that he was an informer from the castle, and a man of the most infamous character in every respect. He was soon after tried, condemned, and executed for the murder of John Hoey.

Lord Portarlington (examined by Mr. Townshend) deposed, that about the end of last April, he, for the first time, saw the witness O'Brien, who was introduced to him by Mr. Higgins, a magistrate of the Queen's county. O'Brien told his lordship, that he had lately been admitted into a society of United Irishmen; and learned, that under pretence of a burial, there were to be a vast number of persons collected on the following Sunday for the purpose of insurrection; that he also mentioned something about an intended attack upon the arsenal, and of the seduction of gentlemen's servants; that his lordship brought O'Brien to the speaker's chamber in the house of commons, where an interview was had with Mr. Pelham—that O'Brien came to him a second time, but his lordship said he had nothing more to do with him, and to communicate any thing he had further to say to Mr. Cooke. O'Brien this time communicated nothing of any importance to his lordship.

The evidence on the part of the crown having been closed, Mr. M'Nally then addressed the jury. He remarked upon the testimony that had been adduced on the part of the crown, and contended that it was not such whereby the prisoner could in the language of the statute, "be provably attaint of open deed"—as to the construction of the word *provably*, he read the following passage from Coke's 3d Inst. 12. "In this branch four things are to be observed, first this word *provablement*, provably, that is, upon direct and manifest proof, not upon conjectural presumptions, or inferences, or strains of wit; but upon good and sufficient proof—and here again the adverb *provablement*, provably, hath a great force, and signifieth a direct and plain proof, which word, the king, the lords, and the commons in parliament did use, for that the offence was so heinous, and was so heavily and so severely punished, as none other the like, and therefore the offender must provably be attainted, which words are as forcible as upon direct and manifest proof. *Note*: the word is not *pro-*

nably, for then *commune argumentum* might have served, but the word is *provably* to be attained."

EVIDENCE FOR THE PRISONER.

Margaret Moore, examined by Mr. Curran, deposed principally, that she lives in Stradbally, in the Queen's county, where she keeps a little shop, industriously earning subsistence for herself and family—that she has known O'Brien since he was born, until the time that he came to Dublin, and that she had heard much of him since, and that since his father died, and he arrived at manhood, she would not "give a groat for his oath"—that coming up to Dublin on her necessary business, as she was going over Carlisle-bridge a bailiff arrested her for 30s. at the suit of James O'Brien, to whom she never was indebted one penny—that she was brought to a spunging-house, where O'Brien came and threatened her further if she did not give him the money—that having lodged two guineas with the people of the house as security for her appearance, she summoned O'Brien to the court of conscience, where she obtained an order for the restitution of her money, the magistrate at the same time observing to O'Brien, that he had "rogue and villain written in his face." Her cross-examination was long, but produced no contradiction to her direct evidence.

John Clark, examined by Mr. McNally, deposed, that he lives at the Blue Bell, and has resided there since he was born—is a bleacher, and keeps a public house—that O'Brien came to him one day in the character of a revenue officer, and produced a paper as an authority to make him show his license, and threatened to run him up to 17 pounds expense—that being thus frightened by O'Brien, he gave him what money he had, consisting of two shillings in silver and one shilling in brass—that he had purchased a hundred weight of ling that day, which O'Brien having seen, he expressed a

desire to have some of it—that he came another time to witness, demanded half a guinea, and that he would never trouble him again—that witness had but sixpence halfpenny about him, which he gave to O'Brien, and never saw him afterwards—O'Brien was sober each time—that he never knew him until those visits under the assumed character of a revenue officer—that he gave him the money each time from fear, as he threatened to deprive him of the little property he possessed, even to the bed he lay on.

Patrick Cavanagh is a farmer, and keeps a carrier's inn, the Red Cow at Inchicore—saw James O'Brien, and believed he would know him. Here he was desired to look around and try if he was present, which he did, and was some time before he recognised him, as O'Brien kept down his head; as soon as the witness saw his face he identified him—recollected O'Brien's calling at his house, and saying he was a revenue officer, stationed on that walk—the witness observed, that he thought a Mr. Fitzpatrick was the officer; to which O'Brien replied, that he himself was lately appointed, and that Fitzpatrick was only assisting him to obtain a knowledge of the walk—O'Brien was not drunk at this time, but very sober—that he came again shortly after, went into the cellar to examine the liquor, borrowed four-pence, got his breakfast, and afterwards summoned him to appear about his license! Witness mentioning these circumstances to a neighbour, was told by him that he had got into bad hands, "for Heaven only knew what O'Brien would swear, when once he got a book into his hands!"—that O'Brien threatened to prosecute witness for an assault, although no such thing had ever happened, and that when O'Brien came next, he gave him all the money he had in his pocket, being two guineas and some silver, glad to get out of such bad hands on any terms.

Several other witnesses were called, who all agreed in giving the informer O'Brien a most infamous character.

Mr. CURRAN. My lords, and gentlemen of the jury, in the early part of this trial, I thought I would have had to ad-

dress you on the most important occasion possible at this side of the grave, a man labouring for life, on the casual strength of an exhausted, and, at best, a feeble advocate. But, gentlemen, do not imagine that I rise under any such impressions—do not imagine that I approach you, sinking under the hopeless difficulties of my cause—I am not now soliciting your indulgence to the inadequacy of my powers, or artfully enlisting your passions on the side of my client. No, gentlemen, but I rise with what of law, of conscience, of justice, and of constitution there yet exists within this realm at my back, and, standing in front of that great and powerful alliance, I *demand* a verdict of acquittal for my client! What is the composition of the evidence? It is a tissue which requires no strength to break through, it vanishes at the touch, and is sundered into tatters.

The right hon. gentleman who stated the case in the first stage of this trial, has been so kind as to express a reliance, that the counsel for the prisoner would address the jury with the same candour which he exemplified on the part of the crown: readily and confidently do I accept the compliment, the more particularly, as, in my cause, I feel no temptation to reject it. Life can present no situation wherein the humble powers of man are so awfully, and so divinely exerted, as in defence of a fellow creature, placed in the circumstances of my client; and if any labours can peculiarly attract the gracious and approving eye of Heaven, it is when God looks down on a human being assailed by human turpitude, and struggling with practices, against which the Deity has placed his special canon when he said—"thou shalt not bear *false witness* against thy neighbour—thou shalt do no *murder*!"

Gentlemen, let me desire you again and again to consider all the circumstances of this man's case, abstracted from the influence of prejudice and habit, and if aught of passion assumes dominion over you, let it be of that honest, generous nature, that good men must feel when they see an in-

nocent man depending on their verdict for his life; to this passion I feel myself insensibly yielding, but unclouded, though not unwarmed, I shall, I trust, proceed in my great duty. Wishing to state my client's case with all possible succinctness the nature of the charge admits, I am glad my learned colleague has acquitted himself on this head already, to such an extent, and with such ability, that any thing I can say will chance to be superfluous—in truth, that honesty of heart, and integrity of principle, for which all must give him credit, uniting with a sound judgment and sympathetic heart, has given to his statement all the advantages it could have derived from these qualities. He has truly said, that “the declaratory act, the 25th of Edw. III. is that on which all charges of high treason are founded;” and I trust the observation will be deeply engraven on your hearts. It is an act made to save the subject from the vague and wandering uncertainty of the law. It is an act which leaves it no longer doubtful whether a man shall incur conviction by his own conduct, or the sagacity of crown construction; whether he shall sink beneath his own guilt, or the cruel and barbarous refinement of crown prosecution. It has been most aptly called the blessed act—and, oh, may the Great God of Justice and of Mercy give repose and eternal blessings to the souls of those honest men by whom it was enacted! By this law, no man shall be convicted of high treason, but on *provable* evidence. The overt acts of treason, as explained in this law, shall be stated clearly and distinctly in the charge, and the proof of these acts shall be equally clear and distinct, in order that no man's life shall hereafter depend on partial and wicked allegation. It does every thing for the prisoner which he could do himself—it does every thing but uttering the verdict, which alone remains with you, and which, I trust, you will give in the same pure, honest, saving spirit in which that act was formed. Gentlemen, I would call it an omnipotent act, if it could possibly appal the informer from our courts of justice; but law cannot do it—religion cannot do it—the

feelings of human nature, frozen in the depraved heart of the wretched informer, cannot be thawed!

No law can prevent the envenomed arrow from being pointed at the intended victim, but it has given him a shield in the integrity of a jury. Every thing is so clear in this act, that all must understand—the several acts of treason must be recited, and provable conviction must follow. What is provable conviction? Are you at a loss to know? Do you think, if a man comes on the table and says, “By virtue of my oath, I know of a conspiracy against the state, and such and such persons are engaged in it”—do you think his mere allegation shall justify you in a verdict of conviction?—A wretch coming on this table, of whatsoever description, whether the noble lord who has been examined, or the honourable judges on the bench, or Mr. James O'Brien, who shall declare upon oath, that a man bought powder, ball and arms, intending to kill another—this is not *provable conviction*; the *unlawful intention* shall be attached by cogency of evidence, and the credit of the witness must stand strong and unimpeached.

The law means not, that infamous assertion, or dirty ribaldry, is to overthrow the character of a man; even in these imputations flung against the victim, there is, fortunately, something detergent, that cleanses the character it was destined to befoul.

In stating the law, gentlemen, I have told you that the overt acts must be laid and proved by positive testimony of untainted witnesses, and, in so saying, I have only spoken the language of the most illustrious writers on the law of England. I should, perhaps, apologize to you, for detaining your attention so long on these particular points, but that, in the present disturbed state of the public mind, and in the abandonment of principle, which it but too frequently produces, I think I cannot too strongly impress you with the purity of legal distinction, so that your souls shall not be harrowed with those torturing regrets which the return of reason would bring along with it, were you, on the present occasion,

for a moment, to resign it to the subjection of your passions; for these, though sometimes amiable in their impetuosity, can never be dignified and just but under the control of reason. The charge against the prisoner is twofold—compassing and imagining the king's death, and adhering to the king's enemies. To be accurate on this head, it is not less my intention than it is my interest; for, if I fall into errors, they will not escape the learned counsel who is to come after me, and whose detections will not fail to be made in the correct spirit of crown prosecutions.

Gentlemen, there are no fewer than 13 overt acts, as described, necessary to support the indictment; these, however, it is not necessary to recapitulate. The learned counsel for the crown has been perfectly candid and correct, in saying, that, if any of them support either species of treason charged in the indictment, it will be sufficient to attach the guilt. I do not complain, that, on the part of the crown, it was not found expedient to point out which act, or acts, went to support the indictment; neither will I complain, gentlemen, if you fix your attention particularly on the circumstance. Mr. Attorney-General has been pleased to make an observation, which drew a remark from my colleague, with whom I fully agree, that the atrocity of a charge should make no impression on you; it was the judgment of candour and liberality, and should be yours—nor, though you should more than answer the high opinion I entertain of you, and though your hearts betray not the consoling confidence which your looks inspire, yet do not disdain to increase your stock of candour and liberality, from whatsoever source it flows; and though the abundance of my client's innocence may render him independent of its exertions, your country wants it all. You are not to suffer impressions of loyalty, or an enthusiastic love for the sacred person of the king, to give your judgments the smallest bias. You are to decide from the evidence which you have heard, and if the atrocity of the charge were to have any influence with you, it should be that

of rendering you more incredulous to the possibility of its truth.

I confess, I cannot conceive a greater crime against civilized society, be the form of government what it may, whether monarchical, republican, or, I had almost said, despotic, than an attempt to destroy the life of the person holding the executive authority. The counsel for the crown cannot feel a greater abhorrence against it than I do; and happy am I, at this moment, that I can do justice to my principles, and the feelings of my heart, without endangering the defence of my client, and that defence is, that your own hearts would not feel more reluctant to the perpetration of the crimes with which he is charged, than the man who there stands at the bar of his country, waiting until you shall clear him from the foul and unmerited imputation—until your verdict, sounding life and honour to his senses, shall rescue him from the dreadful fascination of the informer's eye. The overt acts in the charge against the prisoner are many, and all apparently of the same nature, but which, notwithstanding, admit of very material distinction; this want of candour I attribute to the base imposition of the prosecutor on those who brought him forward. You find at the bottom of the charge a foundation-stone attempted to be laid by O'Brien—the deliberations of a society of *United Irishmen*, and on this are laid all the overt acts. I said, the distinction was of great moment, because it is endeavoured to be held forth to the public—to all Europe, that, at a time like this of peril and of danger, there are, in one province alone, 111,000 of your countrymen combined for the purpose of destroying the king, and the tranquillity of the country, which so much depends on him—an assertion which you should consider of again and again, before you give it any other existence than it deserves from the attainting breath of the informer, if nothing else should, to induce that consideration but the name of *IRISHMEN*, the honours of which you share, so foully, and, as I shall demonstrate, so falsely aspersed.

If you can say that one fact of O'Brien's testimony deserves belief, all that can from thence be inferred is, that a great combination of mind and will exist on some public subject. What says the written evidence on that subject? What are the obligations imposed by the test-oath* of the society of *United Irishmen*? Is it unjust to get rid of religious differences and distinctions? Would to God it were possible! Is it an offence against the state, to promote a full, free, and adequate representation of ALL the people of Ireland in parliament? If it be, the text is full of its own comment, it needs not mine. As to the last clause, obliging to secrecy—Now, gentlemen of the jury, in the hearing of the court, I submit to the opposite counsel this question; I will make my adversary my arbiter. Taking the test-oath, as thus written, is there any thing of treason in it? However objectionable it may be, it is not treasonable. I admit, there may be a colourable combination of words to conceal a real bad design, but to what evils would it not expose society, if in this case, to *suppose* were to *decide*? A high legal authority thus speaks on this subject: "Strong, indeed, must the evidence be, which goes to prove that any man can mean by words, any thing more than what is conveyed in their ordinary acceptation." If the test of any particular community were an open one; if, like the London Corresponding Society, it was to be openly published, then, indeed, there might be a reason for not using words in their common application—but subject to no public discussion, at least, not intended to be so, why should the proceedings of those men, or the obligation by which they are connected, be expressed in the phraseology of studied concealment? If men meet in secret, to talk over how the French can best invade this country, to what purpose is it that they take an engagement different in meaning? Common sense rejects the idea.

Gentlemen, having stated these distinctions, I am led to

* See a copy of this celebrated oath in a following page.

the remaining divisions of the subject you are to consider. I admit, that, because a man merely takes this obligation of union, it cannot prevent his becoming a traitor, if he pleases; but the question for you to decide on, would then be, whether every man who takes it, must necessarily be a traitor? Independent of that engagement, have any superadded facts been proved against the prisoner? What is the evidence of O'Brien? What has he stated? Here, gentlemen, let me claim the benefits of that great privilege which distinguishes trial by jury in this country from all the world.

Not twelve men just emerging from the dust and cobwebs of a study, abstracted from human nature, or only acquainted with its extravagances; but twelve men conversant with life, and practised in those feelings which mark the common and necessary intercourse between man and man. Such are you, gentlemen. How, then, does Mr. O'Brien's tale hang together? Look to its commencement. He walks along Thomas-street, in the open day, (a street, not the least populous in this city,) and is accosted by a man, who, without any preface, tells him, he'll be murdered before he goes half the street, unless he becomes a *United Irishman*! Do you think this a probable story? Suppose any of you, gentlemen, be a *United Irishman*, or a free mason, or a friendly brother, and that you met me walking *innocently* along, just like Mr. O'Brien, and "meaning no harm," would you say, "Stop, Mr. Curran, don't go further, you'll be murdered before you go half the street, if you do not become a *United Irishman*, a free mason, or a friendly brother." Did you ever hear so coaxing an invitation to felony as this? "Sweet Mr. James O'Brien, come in and save your precious life, come in and take an oath, you'll be murdered, before you go half the street! Do, sweetest, dearest Mr. James O'Brien, come in, and do not risk your valuable existence." What a loss had he been to his king, whom he loves so marvellously!

Well, what does poor Mr. O'Brien do? Poor, dear man! He stands petrified with the magnitude of his danger—all

his members refuse their office—he can neither run from the danger, nor call out for assistance; his tongue cleaves to his mouth, and his feet incorporate with the paving stones—it is in vain that his expressive eye silently implores protection of the passenger; he yields at length, as greater men have done, and resignedly submits to his fate—he then enters the house, and being led into a room, a parcel of men make faces at him—but mark the metamorphosis—well may it be said that “miracles will never cease”—he who feared to resist in open air, and in the face of the public, becomes a bravo when pent up in a room, and environed by sixteen men, and one is obliged to bar the door, while another swears him, which, after some resistance, is accordingly done, and poor Mr. O'Brien becomes a United Irishman, for no earthly purpose whatever but merely to save his sweet life! But this is not all, the pill so bitter to the palatancy of his loyal palate must be washed down, and lest he should throw it off his stomach, he is filled up to the neck with beef and whiskey! What further did they do? Mr. O'Brien, thus persecuted, abused and terrified, would have gone and lodged his sorrows in the sympathetic bosom of the major, but to prevent him even this little solace, they made him drunk—the next evening they used him in the like barbarous manner, so that he was not only sworn against his will, but, poor man, he was made drunk against his inclination! Thus was he besieged with *united* beef-steaks and whiskey, and against such potent assailants not even Mr. O'Brien could prevail!

Whether all this whiskey that he had been forced to drink has produced the effect or not, Mr. O'Brien's loyalty is better than his memory. In the spirit of loyalty he becomes prophetic, and told to Lord Portarlington the circumstances relative to the intended attack on the ordnance stores full three weeks before he had obtained the information through moral agency. O! honest James O'Brien!—honest James O'Brien! Let others vainly argue on logical truth and ethi-

cal falsehood, but if I can once fasten him to the ring of perjury, I will bait him at it until his testimony shall fail of producing a verdict, although human nature were as vile and monstrous in you as she is in him! He has made a mistake! But surely no man's life is safe if such evidence were admissible. What argument can be founded on his testimony, when he swears he has perjured himself, and that any thing he says must be false? I must not believe him at all, and by a paradoxical conclusion, suppose, against "the deep damnation" of his own testimony, that he is an honest man!

Another of the prisoner's counsel having here suggested something to Mr. Curran, he continued. My learned friend supposed me to be mistaken, and confounding the evidence of O'Brien and Clarke, but I am not; I advert to what O'Brien said to Lord Portarlington, respecting the attack on the arsenal. Strongly as I feel my interests keep pace with those of my client, I would not defend him at the expense of truth; I seek not to make O'Brien worse than he is; whatever he may be, God Almighty convert his mind! May his reprobation—but, I beg his pardon, let your verdict stamp a due currency on his credit; that will have more force than any casual remarks of mine. How this contradiction in Mr. O'Brien's evidence occurred, I am at no loss to understand. He started with an intention of informing against some person, no matter whom, and whether he ever saw the prisoner at the time he gave the information to Lord Portarlington, is a question; but none, that he fabricated the story for the purpose of imposing on the honest zeal of the law officers of the crown.

Having now glanced at a part of this man's evidence, I do not mean to part with him entirely. I shall have occasion to visit him again, but before I do, let me, gentlemen, impress upon your minds the observation which my colleague applied to the laws of high treason, that if they are not explained on the statute books, they are explained on the hearts of

all honest men; and, as St. Paul says, "though they know not the law, they obey the statutes thereof." The essence of the charge submitted to your consideration, tends to the dissolution of the connection between Ireland and Great Britain.

I own, it is with much warmth and self-gratulation, that I feel this calumny answered by the attachment of every good man to the British constitution. I feel, I embrace its principles; and when I look on you, the proudest benefit of that constitution, I am relieved from the fears of advocacy, since I place my client under its sacred shade. This is not the idle sycophancy of words. It is not crying "Lord! Lord! but doing the will of my Father who is in heaven." If my client were to be tried by a jury of Ludgate-hill shop-keepers, he would, ere now, be in his own house. The law of England would not suffer a man to be cruelly butchered in a court of justice. The law of England recognises the possibility of villains thirsting for the blood of their fellow-creatures; and the people of Ireland have no cause to be incredulous of the fact. Thus it is, that in England *two* witnesses are essential to the proof of high treason; and the poorest wretch that crawls on British ground has this protection between him and those *vampyres* who crawl out of their graves, in search of human blood. If there be but *one* witness, there is the less possibility of detecting him—he the less fears any detection of his murderous tale, having only infernal communication between him and the author of all evil; and, when on the table, which he makes the altar of his sacrifice, however common men may be affected at the sight of the innocent victim, it cannot be supposed that the prompter of his perjury will instigate him to retribution. This is the law in England, and God forbid that Irishmen should so differ, in the estimation of the law, from Englishmen, that their blood is not equally worth preserving.

I do not, gentlemen, apply any part of this observation to you; you are Irishmen yourselves, and I know you will act

proudly and honestly. Why the law of England renders two witnesses necessary, and one witness insufficient, to take away the life of a man on a charge of high treason, is founded on the principles of common sense, and common justice; for, unless the subject were guarded by this wise prevention, every wretch who could so pervert the powers of invention, as to trump up a tale of treason and conspiracy, would have it in his power to defraud the crown into the most abominable and afflicting acts of cruelty and oppression.

Gentlemen of the jury, though from the evidence which has been adduced against the prisoner, they have lost their value, yet, had they been necessary, I must tell you that my client came forward under a disadvantage of great magnitude, the absence of two witnesses, very material to his defence. I am not now at liberty to say, what, I am instructed, would have been proved by May and Roberts. Why is not Mr. Roberts here? Recollect the admission of O'Brien, that he threatened to settle him, and you will cease to wonder at his absence, when, if he came, the dagger was in preparation to be plunged into his heart. I said Mr. Roberts was absent; I correct myself. No! in effect he is here; I appeal to the heart of that obdurate man, what would have been his testimony, if he had dared to venture a personal evidence on this trial? Gracious God! Is a tyranny like this to be borne with where law is said to exist? Shall the horrors which surround the informer, the ferocity of his countenance, and the terrors of his voice, cast such a wide and appalling influence, that none dare approach and save the victim which he marks for ignominy and death?

Now, gentlemen, be pleased to look at the rest of O'Brien's testimony; he tells you there are 111,000 men in one province, added to 10,000 of the inhabitants of the metropolis, ready to assist the object of an invasion. What! gentlemen, do you think there are so many in one province—so many in your city, combined against their country? At such a time as this do you think it a wise thing to say,

on the evidence of the abominable O'Brien, that if the enemy was to invade this country, there are 111,000 men ready to run to his standard? But this is not the most appalling view of the question. For its importance and its novelty, this is the most unprecedented trial in the annals of this country. I recollect none bearing any affinity to it, save that of the unhappy wanderer Jackson: and premising that I mean not the smallest allusion to the conduct of public measures in this country, are you—I ask you seriously, *are you* prepared to embark your respectable characters in the same bottom with this *detestable informer*? Are you ready, on such evidence, to take away, one by one, the lives of a hundred thousand men, by prosecutions in a court of justice? Are you prepared, when O'Brien shall come forward against 10,000 of your fellow-citizens, to assist him in digging the graves which he has destined to receive them one by one? No! could your hearts yield for a moment to the suggestion, your own reflections would vindicate the justice of God, and the insulted character of man; you would fly from the secrets of your chamber and take refuge in the multitude, from those “compunctious visitings,” which meaner men could not look on without horror. Do not think I am speaking disrespectfully of you when I say, that while an O'Brien may be found, it may be the lot of the proudest among you, to be in the dock instead of the jury-box: How, then, on such an occasion, would any of you feel, if such evidence as has been heard this day were adduced against you?

The application affects you—you shrink from the imaginary situation—remember then the great mandate of your religion, and “do unto all men as you would they should do unto you.” Why do you condescend to listen to me with such attention? Why so anxious, if even from me any thing should fall tending to enlighten you on the present awful occasion? It is because, bound by the sacred obligation of an oath, your hearts will not allow you to forfeit it. Have you

any doubt that it is the object of O'Brien to take down the prisoner for the reward that follows? Have you not seen with what more than instinctive keenness this blood-hound has pursued his victim? How he has kept him in view from place to place, until he hunts him through the avenues of the court to where the unhappy man stands now, hopeless of all succour, but that which your verdict shall afford. I have heard of assassination by sword, by pistol, and by dagger, but here is a wretch who would dip the Evangelists in blood—if he thinks he has not sworn his victim to death, he is ready to swear without mercy and without end; but oh! do not, I conjure you, suffer him to take an oath; the arm of the murderer should not pollute the purity of the gospel; if he will swear, let it be on the knife, the proper symbol of his profession! Gentlemen, I am reminded of the tissue of abomination with which this deadly calumniator, this O'Brien, has endeavoured to load so large a portion of your adult countrymen. He charges 100,000 Irishmen with the deliberate cruelty of depriving their fellow creatures of their eyes, tongues and hands! Do not believe the infamous slanderer. If I were told that there was in Ireland one man who could so debase human nature, I should hesitate to believe that even O'Brien were he.

I have heard the argument made use of, that, in cases of a very foul nature, witnesses cannot be found free from imputation; this admitted in its full extent, it does not follow that such evidence is to be accredited without other support. In such cases, strong corroboration is necessary, and you would be the most helpless and unfortunate men in the world, if you were under the necessity of attending to the solitary testimony of such witnesses. In the present prosecution, two witnesses have been examined, for the respectable character of Lord Portarlington must not be polluted by a combination with O'Brien; if his lordship had told exactly the same story with O'Brien, it could not, however, be considered as corroborating O'Brien, who might as easily utter

a falsehood to Lord Portarlington as he did here ; but how much more strongly must you feel yourselves bound to reject his evidence, when appealing to his lordship, he is materially contradicted, and his perjury established. With respect to Clarke, he fixes no corroborative evidence whatever to the overt acts laid in the indictment. In endeavouring to slide in evidence of a conspiracy to murder Thompson, what might be the consequence if such a vile insinuation took possession of your minds ? I am not blinking the question, I come boldly up to it—there is not the most remote evidence to connect the fate of Thompson with the present case, and nothing could show the miserable paucity of his evidence more than seeking to support it on what did not at all relate to the charge. Five witnesses, as if by the interference of Providence, have descredited O'Brien to as many facts.

What did the simple and honest evidence of John Clarke, of Blue-bells, amount to against O'Brien ? It attached the double crime of artifice and perjury, and added robbery to the personification. See how in Dublin there are at this moment thousands and ten thousands of your fellow-citizens, anxiously waiting to know if you will convict the prisoner on the evidence of a wilful and corrupt perjurer whether they are, each in his turn, to feel the fatal effects of his condemnation, or whether they are to find protection in the laws from the machinations of the informer. [Mr. Curran having been reminded to observe on the recipe for coining.] No ! continued he, let him keep his coining for himself ; it will not pass in common with other species—it suits him well, and is the proper emblem of his conscience, *copper-washed*. Would you let such a fellow as this into your house as a servant, under the impression which his evidence must make on your minds ?

If you would not take his services in exchange for wages, would you take his perjury in exchange for the life of a fellow creature ? How will you feel, if the *assignats* of such

evidence pass current for human blood? How will you bear the serrated and iron fangs of remorse, gnawing at your hearts, if, in the moment of abandonment, you suffer the victim to be massacred even in your arms? But has his perjury stopt here? What said the innocent countryman, Patrick Cavanagh? Pursuing the even tenor of his way in the paths of honest industry, he is in the act of fulfilling the decree of his maker;—he is earning his bread by the sweat of his brow, when this villain, less pure than the arch fiend who brought the sentence of laborious action on mankind, enters the habitation of peace and humble industry, and, not content with dipping his tongue in perjury and blood, robs the poor man of two guineas! Can you wonder that he crept into the hole of the multitude, when the witness would have developed him? Do you wonder that he endeavoured to shun your eyes?

At this moment, even the bold and daring villany of O'Brien stood abashed; he saw the eye of Heaven in that of an innocent and injured man; perhaps the feeling was consummated by a glance from the dock—his heart bore testimony to his guilt, and he fled for the same! Gracious God! have you been so soiled in the vile intercourse, that you will give him a degree of credit which you will deny to the candid and untainted evidence of so many honest men? But I have not done with him yet—while an atom of his vileness hangs together, I will separate it, lest you should chance to be tainted by it. Was there a human creature brought forward to say he is any other than a villain? Did his counsel venture to ask our witnesses why they discredited him? Did he dare to ask on what they established their assertions?—No—By this time it is probable Mr. O'Brien is sick of investigation. You find him coiling himself in the scaly circles of his cautious perjury, making anticipated battle against any one who should appear against him—but you see him sink before the proof.

Do you feel, gentlemen, that I have been wantonly aspersing this man's character? Is he not a perjurer, a swindler, and that he is not a murderer, will depend on you. He assumes the character of a king's officer, to rob the king's people of their money, and afterwards, when their property fails him, he seeks to rob them of their lives! What say you to his habitual fellowship with baseness and fraud? He gives a recipe instructing to felony, and counterfeiting the king's coin, and when questioned about it, what is his answer? Why, truly, that it was "only a light, easy way of getting money"—"only a little bit of a humbug." Good God! I ask you, has it ever come across you, to meet with such a constellation of infamy!

Beside the perjury, Clarke had nothing to say, scarcely ground to turn on—He swears he was not in the court yesterday; what then? Why, he has only perjured himself! Well, call little Skirmish up again—Why it was but a mistake! a little puzzled or so, and not being a lawyer, he could not tell whether he was in court or not! Mr. Clarke is a much better evidence than my Lord Portarlington—his lordship, in the improvidence of truth, bore a single testimony, while Clarke, wisely providing against contingencies, swore at both sides of the gutter; but the lesser perjurer is almost forgotten in the greater. No fewer than five perjuries are established against the *loyal* Mr. O'Brien, who has been "united to every honest man." If indicted on any one of these, I must tell you, gentlemen, that he could not be sworn in a court of justice; on the testimony of five witnesses, on his own testimony, he stands indicted before you; and, gentlemen, you must refuse him that credit, not to be squandered on such baseness and profligacy. The present cause takes in the entire character of your country, which may suffer in the eyes of all Europe by your verdict. This is the first prosecution of the kind brought forward to view. It is the great experiment of the *informers of Ireland*, to ascertain how far they can carry on a traffick in human blood! This

cannibal informer, this demon, O'Brien, greedy after human gore, has fifteen other victims in reserve, if, from your verdict, he receives the unhappy man at the bar! Fifteen more of your fellow-citizens are to be tried on *his* evidence! Be you then their saviours; let your verdict snatch them from his ravening maw, and interpose between yourselves and endless remorse!

I know, gentlemen, I would but insult you, if I were to apologize for detaining you thus long; if I have an apology to make to any person, it is to my client, for thus delaying his acquittal. Sweet is the recollection of having done justice in that hour when the hand of death presses on the human heart. Sweet is the hope which it gives birth to! From you I demand that justice for my client, your innocent and unfortunate fellow-subject at the bar, and may you have for it a more lasting reward than the perishable crown we read of which the ancients placed on the brow of him who saved in battle the life of a fellow-citizen.

If *you* should ever be assailed by the hand of the *informer*, may you find an all-powerful refuge in the example which you shall set this day; earnestly do I pray that you may never experience what it is to count the tedious hours in captivity, pining in the damps and gloom of the dungeon, while *the wicked one* is going about at large, "seeking whom he may devour." There is another than a human tribunal, where the best of us will have occasion to look 'back' on the little good we have done. In that awful trial, O! may your verdict this day assure your hopes, and give you strength and consolation in the presence of an ADJUDGING GOD.

Mr. Solicitor-General followed Mr. Curran, but as he dwelt chiefly on the points and explanations of law, already so often repeated, we deem it unnecessary to lay them before our readers again.

The Hon. Judge Chamberlaine, charging the jury, spoke in substance as follows:

Gentlemen of the jury, the charge against the prisoner has been truly stated, to be of a nature the most atrocious,

inasmuch as an attempt to overturn the government of a country, by disturbing the peace and security of society, endangers the life and liberties of every individual; but it has also been truly said, that in proportion to the atrocity of a crime, should be the evidence brought forward to establish it. Two species of high treason have been laid in the indictment; on these I do not think it necessary to observe at length; the counsel on both sides seem well agreed on the subject; these two are, compassing the king's death, and adhering to his enemies. Every man of plain sense must know what is meant by the latter. [Here his lordship instanced, as explanatory, the cases of Lord Preston, Doctor Hensil, and the Rev. Mr. Jackson.] The completion of the design is not necessary to constitute the guilt. If we were to wait for the event in such a case, it would be idle to talk of punishment.

The only count in the indictment for you to consider, is, the adhering to the king's enemies. In support of the others, Mr. Baron Smith is of opinion with me, there has no proof whatsoever been advanced. The witness O'Brien swears to several facts going to prove adherence to the king's enemies; but before I state a particle of his evidence, I must give you this caution, that, if you believe he has wilfully and deliberately committed perjury on this trial, you are to reject every part of his testimony; if you are of opinion that you would find him guilty, if indicted before you for perjury, you must reject him altogether—for, atrocious as the crime of high treason is, it is better twenty traitors should escape, than one innocent man be deprived of his life.

His lordship concluded his observations thus—"It is a dangerous experiment, and which I never will countenance, to admit the evidence of a witness who, on trial, commits wilful perjury. There is, it is true, some corroborating testimony against the prisoner; but to make him a traitor, and fix on him a design of aiding and abetting the king's enemies, I see no evidence whatever; and I trust in God, that perjury will not find a suffrage in your verdict, or in the laws of this country."

After an absence of about ten minutes, the jury returned a verdict—NOT GUILTY.

On Thursday, the 18th, Mr. Finney was again arraigned on an indictment for administering unlawful oaths, and, for want of prosecution, acquitted.

COUNSEL for the crown :—The Attorney-General, the Solicitor-General, Mr. Prime Serjeant, Messrs. Ridgeway and Townsend; Agent, Mr. Kemis.

COUNSEL for the prisoner :—Messrs. Curran, McNally, Emmet, and Sampson; Agent, Mr. Dowling:

THE TRIAL

OF HENRY AND JOHN SHEARES, FOR HIGH TREASON.

COURT OF OYER AND TERMINER.

ON the 21st of May, 1798, Henry Sheares and John Sheares, Esqrs. were arrested and committed to gaol on a charge of high treason—and, on the 26th of June, at a court held at the sessions-house for the city and county of Dublin, by virtue of a special commission of oyer and terminer, composed of Lord Carleton, Hon. Alexander Crookshank, Hon. Michael Smith, Hon. Denis George, and the Hon. Robert Day, the grand jury found an indictment for high treason against the two Sheares, of which the following is an abstract:—

First Count. That the said Henry Sheares and John Sheares, not regarding the duty of their allegiance, falsely, wickedly, and traitorously, did compass, imagine, and intend the king, their supreme and lawful lord, off and from his royal state, crown, title, and government of this his kingdom of Ireland, to depose and deprive, and the said lord the king to kill, to put to death, and murder. To which were added sixteen *overt acts*.

Second Count. That the said Henry and John Sheares, with intent to subvert the government and constitution, unlawfully and traitorously were adhering to, and aiding and comforting the persons exercising the powers of government

in France, and the men of France, under the government of the said persons, then being enemies of the king.

The same overt acts were set forth in support of the second count, with an additional one, to wit, the 7th, that they became members of a society of *United Irishmen*, for the purpose of aiding and assisting the French.

WEDNESDAY, JULY 4, 1798.

Henry Sheares and John Sheares were brought to the bar, and arraigned upon the indictment that had been found against them.

Mr. McNally begged their lordships to indulge the prisoners with some little time, as their counsel had not all come into court; and expressed a wish to advise with his colleagues on an important objection to the indictment, which went to show that the whole proceedings were *coram non judice*.

After a delay of half an hour, the prisoners' counsel not appearing, the court said the cause must go on.

Mr. McNally then rose and moved to quash the indictment, on the ground that one of the grand jury was not legally qualified to serve, that he was an alien, a Frenchman born; he stated that the fact had but lately come to his knowledge, that the grand panel having been called over in the absence of the prisoners, and at a time when they had no counsel assigned them, they had it not in their power to take advantage of it at an early stage of the proceedings. "I am at a loss," said he, "to know how the fact is to be inquired into, whether by collateral issue or otherwise. I am not ashamed to own my ignorance in this respect—perhaps it may come in the shape of a plea, to which the counsel for the crown may demur."

The court overruled the motion; and said, that if the counsel had any plea they must put it in.

Their lordships waited some time for the plea to be

drawn and engrossed. In the interval Mr. Curran and Mr. Plunket came into court, and apologized for their absence. A plea was then put in and read, in substance as follows:—

That the said Henry and John Sheares say, that they ought not to be compelled to answer said indictment, because that John Decluzeau is an alien, and not a natural born subject, he having been born in the kingdom of France, &c.

On the part of the crown, a replication was filed to the following purport, viz. That John Decluzeau is not an alien, but is, by statute in that case made and provided, deemed and adjudged a natural born subject of our said lord the king, &c.

Mr. Curran then moved the court to adjourn, in order to give time to consider of the case, as it was in its nature so entirely novel; but the court refused to do so. He then moved to quash the replication on the ground that in criminal cases the parties were not permitted to plead double.*

Lord Carleton. In civil cases certainly, the right of pleading double arises from an act of parliament. As to the objection you now make, you must avail yourself of it in some other way. We will not quash the replication upon motion.

The following rejoinder was then filed on the part of the prisoners, viz. They demur to the replication, and pray the judgment of the court, whether they shall be bound to the indictment, &c.

To this the Solicitor-General answered and said, that the matters contained in the indictment are sufficient in law to put the said John and Henry Sheares on their trial, and prays the judgment of the court, &c.

Mr. CURRAN. My lords, it is my duty to suggest such reasons as occur to me in support of the demurrer filed here on the part of the prisoners. My lords, the law of this country has declared, that, in order to the conviction of any man;

* See 5 Bac. Abr. 447. 4 Term Rep. 701. 2 Stra. 908.

not only of any charge of the higher species of criminal offences, but of any criminal charge whatsoever, he must be convicted upon the finding of two juries; first, of the grand jury, who determine upon the guilt in one point of view; and, secondly, by the corroborative finding of the petty jury, who establish that guilt in a more direct manner; and it is the law of this country, that the jurors who shall so find, whether upon the grand, or whether upon the petty inquest, shall be *probi et legales homines omni exceptione majores*. They must be open to no legal objection of personal incompetence; they must be capable of holding freehold property; and, in order to have freehold property, must not be open to the objection of being born under the jurisdiction of a foreign prince, or owing allegiance to any foreign power. Because the law of this country, and, indeed, the law of every country in Europe, has thought it an indispensable precaution to trust no man with the weight or influence which territorial possession may give him contrary to that allegiance which ought to flow from every man having property in the country. This observation is emphatically forcible in every branch of the criminal law; but in the law of treason, it has a degree of force and cogency that fails in every inferior class of offence; because, the very point to be inquired into in treason is, the nature of allegiance. The general nature of allegiance may be pretty clear to every man. Every man, however unlearned he may be, can easily acquire such a notion of allegiance, whether natural and born with him, or whether it be temporary and contracted by emigration into another country—he may acquire a vague, untechnical idea of allegiance for his immediate personal conduct. But I am warranted in saying, that the constitution does not suppose that any foreigner has any direct idea of allegiance but what he owes to his original prince. The constitution supposes, and takes for granted, that no foreigner has such an idea of our peculiar

and precise allegiance, as qualifies him to act as a juror, where that is the question to be inquired into; and I found myself upon this known principle, that, though the benignity of the English law has, in many cases, where strangers are tried, given a jury half composed of foreigners and half natives, that benefit is denied to any man accused of treason, for the reason I have stated; "because," says Sir W. Blackstone, "aliens are very improper judges of the breach of allegiance."* A foreigner is a most improper judge of what the allegiance is, which binds an English subject to his constitution. And therefore upon that idea of utter incompetency in a stranger, is every foreigner directly removed and repelled from the possibility of exercising a function that he is supposed utterly unable to discharge. If one Frenchman shall be suffered to find a bill of indictment between our lord the king and his subjects, by a parity of reasoning, may twenty-three men of the same descent be put into the box, with authority to find a bill of indictment. By the same reason that the court may communicate with one man whose language they do not know, may they communicate with twenty-three natives of twenty-three different countries and languages. How far do I mean to carry this? Thus far: That every statute or means by which allegiance may be shaken off, and any kind of benefit or privilege conferred upon an emigrating foreigner, is for ever to be considered, by a court of justice, with relation to that natural incompetency to perform certain trusts, which is taken for granted, and established by the law of England. I urge it with this idea—that, whether the privilege is conferred by letters patent, making the foreigner a denizen, or whether by act of parliament, making him as a native subject, the letters patent, or act of parliament, should be construed *secundum subjectam materiam*, and a court of justice will take care that no privilege be supposed to be granted incompatible with the original situation of the party to whom, or the constitution of the country in which it is conferred. Therefore, my lords, my clients have pleaded, that

* 4 Black. Com. 352.

the bill of indictment to which they have been called upon to answer, has been found, among others, by a foreigner, born under a foreign allegiance, and incapable of exercising the right of a juror upon the grand or the petty inquest. That is the substance of the plea in abatement. The counsel for the crown have replied, and we have demurred to the second and third parts of the replication.

My lords, I take it to be a rule of law, not now to be questioned, that there is a distinction in our statute laws; some are of a public, some of a private nature. That part of the legislative edict which is considered as of a public nature, is supposed to be recorded in the breasts of the king's judges. As the king's judges, you are the depositaries and records of the public law of the country. But, wherever a private indulgence is granted, or a mere personal privilege conferred, the king's judges are not the depositaries of such laws, though enacted with the same publicity; you are not the repositories of deeds or titles which give men franchises or estates, nor of those statutes which ease a man of disability, or grant him a privilege.

With regard to the individual to whom they relate, they are mere private acts, muniments, or deeds, call them by what name you please; they are to be shown as private deeds to such courts as it may be thought necessary to bring them before. Therefore, if there be any act of parliament by which a man is enabled to say he has shaken off the disability which prevented him from intermeddling in the political or judicial arrangement of the country; if he says, he is no longer to be considered as an alien, he must show that act specially to the court in his pleading. The particular authority, whether by letters of denization, or act of parliament, must be set forth, that the court may judge of them—that, if it be by act of parliament, the court may see whether he comes within the provisions of the act. This replication does no such thing. The second and third parts were intended to be founded upon the statute of Charles

II. and also, I suppose, upon the subsequent statute made to give it perpetuity, with certain additional requisites.

The statute of Charles recites, that the kingdom was wasted by the unfortunate troubles of that time, and that trade had decreased for want of merchants. After thus stating generally the grievances which had afflicted the trade and population of this country, and the necessity of encouraging emigration from abroad, it goes on and says, that strangers may be induced to transport themselves and families to replenish the country, if they may be made partakers of the advantages and free exercise of their trades without interruption and disturbance. The grievance was the scarcity of men; the remedy was the encouragement of foreigners to transport themselves, and the encouragement given was such a degree of protection as was necessary to the full exercise of their trades in dealing, buying and selling, and enjoying the fullest extent of personal security. Therefore it enacts, "that all foreigners of the protestant religion, and all merchants, &c. who shall within the term of seven years," transport themselves to this country, shall be deemed and reputed as natural born subjects, "and may implead and be impleaded, and prosecute and defend suits." The intention was, to give them protection for the purposes for which they were encouraged to come here; and therefore the statute, instead of saying generally they shall be "subjects to all intents and purposes," specifically enumerates the privileges they shall enjoy. If the legislature intended to make them subjects "to all intents and purposes," it had nothing more to do than to say so. But not having meant any such thing, the statute is confined to the enumeration of the mere hospitable rights and privileges to be granted to such foreigners as come here for special purposes. It states, that he may implead and be answered unto—that he may prosecute and defend suits. Why go on, and tell a man, who is "to all intents and purposes," a natural born subject, that he may implead and bring actions? I say it is to all intents and pur-

poses absurd and preposterous. If *all* privileges be granted in the first instance, why mention *particular* parts afterwards? A man would be esteemed absurd, who by his grant gave a thing under a general description, and afterwards granted the particular parts. What would be thought of a man who gave another his horse, and then said, "I also give you liberty to ride him when and where you please!" What was the case here? The government of Ireland said we want men of skill and industry—we invite you to come over—our intention is, that if you be protestants, you shall be protected, but you are not to be judges, or legislators, or kings—we may make an act of parliament, giving you protection and encouragement to follow the trades for your knowledge in which we invite you. You are to exercise your trade as a natural born subject. How? With full power to make a bargain, and enforce it, we invest you with the same power, and you shall have the same benefit as if you were appealing to your own natural forum of public justice. You shall be here as a Frenchman in Paris, buying and selling the commodities appertaining to your trade.

Look at another clause in the act of parliament which is said to make a legislator of this man, or a juror to pass upon the life and death of a fellow subject—no, not a fellow subject, but a stranger. It says, "you may purchase an estate, and you may enjoy it, without being a trustee for the crown." Why was that necessary, if he were a subject "to all intents and purposes?"

This statute had continuance for the period of seven years only: That is, it limited the time in which a foreigner might avail himself of its benefits to seven years. The stat. 4 Geo. I. revives it and makes it perpetual. I trust I may say that whenever an act of parliament is made, giving perpetuity to a former act, no greater force or operation can be given to the latter than would have been given to the former, had it been declared perpetual at the time of enactment. An act of that kind is merely to cure the defect of continuance;

therefore it does no more than is necessary to that end. Then how will it stand? Thus: that any man, who within seven years after the passing the act of Charles II. performing the requisites therein mentioned, shall have the privileges thereby granted, for ever thereafter. The court would assume the office of legislation, not of construction, if they inferred, or supplied by intendment, a longer period than seven years. There is nothing in the subsequent act changing the term of seven years, limited in the former; it is not competent to a court of justice to alter or extend the operation of a statute by the introduction of clauses not to be found in it. It is the business of the legislature to enact laws; of the court to expound them.

It is worthy of observation, my lords, that this subsequent statute has annexed certain explicit conditions to be performed by the person who is to take the benefit of the preceding act; for it is provided that no person shall have the benefit of the act, unless he take the several oaths appointed to be taken by the latter; among which is the oath against the pretender, which is not stated in the replication.

There is a circumstance in the latter act, which, with regard to the argument, is extremely strong to show that the legislature did not intend to grant the universal franchise and privilege to all intents and purposes. It revives every part of the former, save that part exempting aliens from the payment of excise. Will it be contended that an alien should be considered as a natural born subject "to all intents and purposes," and yet be exempt from the payment of excise? It is absurd, and impossible.

Put it in another point of view. What is an act of naturalization? It is an encroachment upon the common law rights, which every man born in this country has in it: Those rights are encroached upon and taken away by a stranger. The statute therefore should be construed with the rigour of a penal law. The court to be sure will see that the stran-

ger has the full benefit intended for him by the statute; but they will not give him any privilege inconsistent with the rights of the natural born subjects, or incompatible with the fundamental principles of the constitution, into which he is admitted, and I found myself upon this, that after declaring that he shall be considered as a natural born subject, the act states such privileges only as are necessary to the exercise of trade and the enjoyment of property.

Therefore, it comes back to the observation just now made. Is not any man, pleading a statute of naturalization by which he claims to be considered as a natural born subject, bound to set forth a compliance with all the requisites pointed out by that statute? He is made a native to a certain extent upon complying with certain conditions; is he not bound to state that compliance? Here he has not stated it. But I go further; I say that every condition mentioned in the statute of Charles should be set forth in the second part of the replication; that he came with an intent of settling; that he brought his family and his stock; that he took the oaths before the proper magistrates, and after a minute statement of every fact, he should state the additional oath required by the statute of Geo. I.

But, my lords, a great question remains behind to be decided upon. I know of no case upon it. I do not pretend to say that the industry of other men may not have discovered a case. But I would not be surprised if no such case could be found. If, since the history of the administration of justice in all its forms in England, a stranger had not been found intruding himself into its concerns; if through the entire history of our courts of justice, an instance was not to be found of the folly of a stranger interfering upon so awful a subject as the breach of allegiance between a subject and his king—my lords, I beg leave upon this part to say that it would be a most formidable thing, that a court of justice would pronounce a determination big with danger, if they say that an alien may find a bill of indictment involving the doctrine of

allegiance. It is permitting him to intermeddle with a business of which he cannot be supposed to have any knowledge. Shall a subject of the Irish crown be charged with a breach of his allegiance upon the saying of a German, an Italian, a Frenchman, or a Spaniard? Can any man suppose any thing more monstrous or absurd, than that of a stranger being competent to form an opinion upon the subject? I would not form a supposition upon it. At a time when the generals, the admirals, and the captains of France are endeavouring to pour their armies in upon us, shall we permit their petty detachments to attack us in judicial hostility? Shall we sit inactive, and see their skirmishers take off our fellow subjects by explosion in a jury room!

When did this man come into this country? Is the raft upon which he floated now in court? What has he said upon the back of the bill? What understanding had he of it? If he can write more than his own name, and had wrote *ignoramus* upon the back of the indictment, he might have written truly; he might say he knew nothing of the matter. He says he is naturalized—I am glad of it. You are welcome to Ireland, sir. You shall have all the privileges of a stranger, independent of the invitation by which you came. If you sell, you shall recover the price of your wares; you shall enforce the contract. If you purchase an estate, you shall transmit it to your children, if you have any—if not, your devisee shall have it. But you must know, that in this constitution there are laws binding upon the court as strongly as upon you. The statute itself which confers the privileges you enjoy, makes you incapable of discharging offices. Why? Because they go to the fundamentals of the constitution, and belong only to those men who have an interest in that constitution transmitted to them from their ancestors. Therefore, my lords, the foreigner must be content; he shall be kept apart from the *judicial* functions; in the extensive words of an act of parliament, he shall be kept from “all places of trust whatsoever.” If the act had been silent in that part, the

court would notwithstanding be bound to say that it did not confer the power of filling the high departments of the state. The alien would still be incapable of sitting in either house of parliament. He would be incapable of advising with the king, or holding any place of constitutional trust whatever. What ! shall it be said there is no trust in the office of a grand juror ? I do not speak lightly of the sacred office confided to your lordships, of administering justice between the crown and the subject, or between subject and subject : I do not compare the office of grand juror to that. But, in the name of God, with regard to the issues of life and death—with regard to the consequences of imputed or established criminality, what difference is there in the importance of the constitution, between the juror who brings in a verdict, and the judge who pronounces upon that verdict the sentence of the law ? Shall it be said that there is no place of *trust* ? What is the place of trust meant by the statute ? It is not merely giving a thing to another, or depositing for safe custody. It means constitutional trust—the trust of executing given departments, in which the highest confidence must be reposed in the man appointed to perform them. It means not the trust of keeping a paltry chattel—it means the awful trust of keeping the secrets of the state, and of the king. Look at the weight of the obligation imposed upon the juror—look at the enormous extent of the danger, if he violate or disregard it. At a time like the present—a time of war—what is the trust to be confided to the conscience of a Frenchman ? But I am speaking for the lives of my clients, and I do not choose, even here, to state the terms of the trust, lest I might furnish as many hints of mischief, as I am anxious to furnish arguments of defence. But shall a Frenchman at this moment be intrusted with those secrets upon which your sitting upon that bench may eventually depend ? What is the inquiry to be made ? Having been a pedlar in the country, is he to have the selling of the country, if he be inclined to do so ? Is he to have confided to him the secrets of the state ? He may re-

member to have had a first allegiance, that he was sworn to it. He might find civilians to aid his perfidious logic, and to tell him, that a secret communicated to him by the humanity of the country which received him, might be disclosed to the older and better matured allegiance sworn to a foreign power. He might give up the perfidious use of his conscience to the integrity of the older title. Shall the power of calling upon an Irishman to take his trial before an Irish judge, before the country, be left to the broken speech, the *lingua franca* of a stranger coming among you, and saying, "I was naturalized by act of parliament, and I cannot carry on my trade without dealing in the blood of your citizens." He holds up your statute as his protection, and flings it against your liberty, claiming the right of exercising a judicial function, and feeling, at the same time, the love of an older allegiance. It is a love which every man ought to feel, and which every subject of this country would feel, if he left this country to-morrow, and were to spend his last hour among the Hottentots of Africa.

I do trust in God there is not a man who hears me, who does not feel that he would carry with him to the remotest part of the globe, the old ties which bound him to his original friends, his country, and his king: I do, as the advocate of my clients, of my country—as the advocate for *you*, my lords, whose elevation prevents you from the possibility of being advocates for yourselves—for your children, stand up, and rely upon it, that this act of parliament has been confined to a limited operation—it was enacted for a limited purpose, and will not allow this meddling stranger to pass upon the life, fame, or fortune of the gentlemen at the bar—of me, their advocate—of you, their judges—or of any man in the nation. It is an intrusion not to be borne.

My lords, you deny him no advantage that strangers ought to have. By extending the statute, you take away a right from a native of the country, and you transfer one to an intermeddling stranger. I do not mean to treat him with disre-

spect; he may be a respectable and worthy man; but, whatever he may be, I do, with humble reliance upon the justice of the court, deprecate the idea of communicating to him that high, awful, and tremendous privilege of passing judgment upon our lives, and of expounding the law in cases of treason; it may become a precedent, that strangers may be called upon to judge of breaches of allegiance between a subject and his sovereign.

Mr. Prime Serjeant then addressed the court. He adverted to the acts of parliament referred to in the replication, and exerted his ingenuity to show that John Decluzeau, the person objected to, having been naturalized according to those statutes, was, in every respect, qualified to serve on a grand jury; he compared the statutes of Charles II. and 4 George I. with several others on the same subject, and contended, that the expressions clearly manifested an intention, in the minds of the legislators, to extend the rights and privileges of natural born subjects to certain aliens, in every respect whatever, except in the instances particularly specified, and that the right of serving on juries was not within the exceptions.

Mr. Plunket, in reply, cited and relied upon 2 Hawk. c. 25. sect. 16. 26. and 28. to show that this was the proper manner of taking advantage of such vitious proceedings, occasioned by exceptionable persons serving on the grand jury who found the indictment. He then replied to what had fallen from Mr. Prime Serjeant, as to the construction of the statutes, and concluded by again urging the arguments that had been advanced by Mr. Curran.

Lord Carleton. The question has been ably and eloquently argued, so as to convince us of the propriety of our rule, not to allow any further time.

This is a replication not put in by Mr. Decluzeau himself apprized of all the circumstances, and possessed of all the documents necessary to the establishment of his right. It is a replication by the counsel for the crown upon a plea put

in by the prisoners' counsel. I wish not to be understood as giving any opinion, supposing the question to have arisen merely upon the objection to Mr. Decluzeau's being an alien, how far it could be taken advantage of by way of plea. I do not wish to shake any authority upon this subject; but to have it considered that I have not made up my mind upon the point, and that I give no opinion upon it. That a person being an alien is a good cause of challenge, I think, is well founded; but whether it can be taken advantage of by way of plea, I reserve my opinion.

That a juror is outlawed may be taken advantage of by plea in avoidance of the indictment, but whenever such plea is given by the common law, or depends upon the statute of 11 Hen. IV. c. 9. is a question of some difficulty; that statute was passed about the same time with the case mentioned by Hawkins; and from a manuscript note which I have made in the margin of my Hawkins, I perceive the statute received the royal assent in *quindena Hilarii*, which was on the 27th or 28th of January, and might perhaps have preceded the decision referred to by Hawkins.

At the same time, there is considerable weight in what has been mentioned, that the prisoners were not present at the time the jury was sworn, and that may, perhaps, support the decision in Hawkins to give them a right of pleading.

But, assuming for a moment that this matter may be taken advantage of by way of plea, it is necessary to consider the pleading here. Issue is joined upon the first part of the replication. The second part is defective, as referring matter of law to the court, without any fact to support it; therefore, we throw that out of the case. As to the third, my brethren agree with me, and we cannot better express ourselves than by adopting the argument of Mr. Prime Serjeant. It appears to us, that these acts of parliament cannot have the limited construction which has been contended for by the prisoners' counsel—that they must be sufficiently extensive to take in cases like the present; and the nature of

the restrictions proves, what the operations of the clauses would have been if these restrictions had not been enacted.

With regard to "offices of trust"—they must allude to such as are previously enumerated, viz. offices held under the crown.

But it is said, that sufficient matter has not been stated in the replication to show that this juror comes within the provisions of the statutes. We think the counsel for the crown have stated sufficient matter for that purpose. The oaths of allegiance, supremacy, and abjuration, and the declaration, are stated to have been taken, and the oath respecting the pretender is part of the oath of abjuration. Therefore, we are all of opinion, that the demurrer must be overruled, and judgment given for the crown—and a *respondeat ouster* awarded.

The prisoners then pleaded not guilty, in the usual form, and the trial was postponed by reason of the absence of their witnesses, until the 12th of July.

THURSDAY, JULY 12.

This day the court (composed of Lord Carleton, Mr. Justice Crookshank, and Mr. Baron Smith) met, agreeably to adjournment, and the prisoners, Henry and John Sheares, being put to the bar, a jury was empannelled and sworn to try them both together.

The Attorney-General, (Mr. Toler,) in opening the case, expressed his sincere regret that the first act of his professional duty, in the situation in which he was then placed, was to prosecute two gentlemen whose characters and standings in life were so high as that of the prisoners at the bar; yet it was a duty of which the public have a right to demand a firm and honest discharge. Mr. Attorney then concisely explained to the jury the law of high treason, as applicable to the present case, and stated what he had been instructed to say would appear to be the evidence; and after reading the

proclamation, (marked No. II.) he concluded thus:—"Who is there that can read this bloody scroll, and not pronounce judgment upon the intention and imagination of the heart that composed it?—and, whilst I thus behold it, methinks I have, in palpable form, before me, the sanguinary author penning it with his bloody dagger in one hand, and pointing in triumph to the revolutionary tribunal and guillotine with the other. And yet, gentlemen, it is not unworthy the observation of my countrymen, that there may be found in this paper some precepts, that, if well applied, it would be well to inculcate, when it denounces vengeance against treachery and cowardice. I admire the wisdom of the laws of those countries which put traitors and cowards in the same class of public criminals; and I am free to say, that the man that is traitor or coward enough not to take that unequivocal part which becomes him, at such a time as this, deserves the severest punishment, and the execration of his country."

EVIDENCE FOR THE CROWN.

John Warnford Armstrong called. Mr. Curran suspecting that this witness did not believe in a God, or a future state of responsibility, by the permission of the court, put the following question to him:—

"In the presence of this awful court, I ask you to declare whether you believe in God, and in a future state of rewards and punishments?"—Answer. "I do."

He was then sworn, and deposed that he is a native of Ireland, about 27 years of age; that he was a captain in the King's county militia; that being acquainted with Mr. Byrne, the bookseller, he used frequently to go to his shop for the purpose of purchasing the new publications as they came out; that on the 10th of May, 1798, being in Mr. Byrne's shop, he proposed introducing him to Mr. Henry Sheares; as to which, he immediately consulted with Captain Clibborn, the result of which consultation was, that he should give Mr.

Sheares a meeting, which he did. On the introduction, Byrne said to Henry, "all I can say to you, Mr. Sheares, is, that Capt. Armstrong is a *true brother*, and you may depend upon him." Henry observed, that what he wished to say to this deponent, he wished to say in the presence of his brother. He went away in a little while, and shortly after John Sheares was introduced to this deponent, who said to this deponent, that he knew his principles perfectly well; that he was emboldened by that knowledge, and the pressure of affairs induced him for the good of the cause, to make himself known to him, and to show him how the cause could be benefited by his joining in action as he knew this deponent had by inclination. This deponent replied, "that he would serve him to the utmost of his power!"—John then said, that the rising was very near; that they could not wait for the French, but had determined upon "a home exertion," and that the principal manner in which this deponent could assist them was by seducing the soldiers, and bringing about the King's county militia, and consulting with him about taking the camp at Lehaunstown, where this deponent was quartered. For the purpose of bringing about the soldiers, he (John) would recommend to him to practise upon the non-commissioned officers and privates, who were of the Roman Catholic religion, as they were most likely to think themselves aggrieved. John then appointed the Sunday following to meet at his house.

This deponent, in the morning of that day, went agreeably to appointment to his house, and found only Henry at home, with whom he had a conversation nearly of the same import as that which he had with John the former day. Henry apologized for his not returning to Byrne's, for that there was a committee sitting that day, which it was necessary one of them should attend; but what was the business of the committee this deponent did not learn. John came in and said to this deponent, in presence of Henry, that he should be fearful of committing himself with any men of his regiment,

but if he knew any, he should then do what he could to act in concert with them; he said it was the intention of the United Irishmen to seize the camp, the artillery at Chapelizod, and the city of Dublin, in one night; that there was to be one hour and a half between the seizing of the camp and Dublin, and an hour between seizing Dublin and Chapelizod, so that the news of both might arrive at the same time—he said, if this deponent would call at 11 at night, he would give him the names of some men in the regiment to which he belonged.

At the evening meeting, John told this deponent that he had not been able to obtain the names, but that a man would call upon him for a pass, and that he might be conversed with freely. No person called; this deponent therefore went to Mr. Sheares to learn the reason—John said, he wished to introduce him to a gentleman with whom he might consult and advise during his absence, for that he must go down and organize Cork; that the rising in Cork and other places was to be so arranged, that the news would reach Dublin at the same time. John appointed a meeting on the next day, for the purpose of introducing this deponent to the gentleman spoken of.

On the 17th this deponent met the two Sheares at their house; soon after Mr. Lawless came in, to whom he was introduced. Lawless said he would procure the names of two United Irishmen of the regiment to which this deponent belonged, and leave them with Mr. Sheares, ready when he should call again in the evening. This deponent called in the evening, and John gave him a note of introduction to Serjeant Connors, and mentioned the name of Pat. Fennan, which two persons he understood to be the men before alluded to.

On the 20th, this deponent again met the two brothers, and had some further conversation on the before-mentioned subject, and on the morning after they were arrested. This deponent saw John after his arrest, who asked him if his pa-

pers had been seized? He answered, he did not know. John replied, he hoped not, for there was one among them which would commit him. It was the constant practice of this deponent after each interview, to note what passed in writing, and to communicate the business to Col. L'Estrange (who commanded the regiment to which he belonged) and to Capt. Clibborn, and sometimes to Lord Castlereagh and Mr. Cooke. This deponent had read Paine's Rights of Man and Age of Reason, but never told any person they contained his political or religious creed, nor did he ever tell any one that he disregarded the obligation of an oath, or that he did not believe in a future state of rewards and punishments. This deponent, under Sir James Duff, on his way to Blackmore Hill, where there was a party of rebels, met on the road three men with green cockades; one they shot, another they hanged, and the third they flogged and made a guide of.

Andrew Kearney swore that he was in company with John Sheares in May last, at a house in Werburgh-street, Dublin, where there were five or six persons, amongst whom was a man by the name of Corr, and another by the name of McClure, who were both Colonels in the United Irishmen's army—that the business of the meeting was to ascertain the number of United Irishmen in Dublin—that some one of the company named 1,100; other numbers were mentioned by the different persons present, but the witness cannot recollect them; that their returns were written down, but he does not recollect to have seen John Sheares write.

Alderman Alexander being sworn, deposed that he went to the house of Messrs. Sheares on the 21st of May last, for the purpose of arresting them; that he placed guards in the front and rear of the house to prevent their escape, and then rapped at the door in the usual way, and a woman looked out of the window, and soon after the door was opened, and they went in and found only Henry at home: on his being told that all his papers must be searched for and

seized, he appeared not at all alarmed, but replied there was no paper in his house that could injure him. This deponent found the paper marked No. II. in a small writing box upon the table in the parlour or study; the box was shut down but not locked, nor any way fastened; that while they were at the door, Henry had full time to have destroyed this or any other paper.

John Dwyer sworn, said that he had often seen both Henry and John Sheares write, and that he believed the papers marked No. I. II. III. were the hand-writing of John.

[No. I. was a short note from John Sheares, introducing Serjeant Connors to the *confidence* of Capt. Armstrong. No. II. is what was meant to be a proclamation at the first rising of the United Men, found in the writing box of Henry Sheares. No. III. in the hand-writing of John Sheares, appeared to be a list of United Men in certain districts amounting to 8,100.]

Mr. Ponsonby and Mr. Plunket then spoke to the evidence. They contended that the prisoners could not be guilty of compassing the death of the king in Ireland; because, compassing or imagining the death of the king, meant not merely the destruction or abolition of the kingly office, but the natural and actual dissolution of the king's mortal frame by violent means, which could not be effected in Ireland, where the king never was; that this species of treason must be solely confined to England, or to that country where the king actually resided. They also argued that, inasmuch as the indictment contained only one other charge, of adhering to the French, then being the enemies of the king, and, as the testimony only went to prove that the Sheares adhered to certain rebels within Ireland, and not any foreign enemies, there was therefore no evidence to establish the crime of which they stood charged—that it was the privilege of the subject to have his crime plainly alleged against him, and defined according to the known laws of the land; and the crime so defined, must be supported by evidence strictly applicable to it; so that no

man should be convicted but by a judgment *secundum allegata et probata*. They then concluded with some remarks upon the consistency, and general complexion of the testimony that had been adduced on the part of the crown.

EVIDENCE FOR THE PRISONERS.

Charles R. Shervington swore that he was a lieutenant in the 41st regiment, and was acquainted with Captain Armstrong (who was his nephew) from his childhood; that he had often been in his company, and had conversation with him; that when speaking with Armstrong of the French revolution, &c. he said, he did not wish a kingly government; that if there was not another executioner in the kingdom for George the III. but himself, he would be one, and pique himself upon being so. This deponent told him he was a damned fellow, and ought to give up his commission, leave the army, and go over to France. This deponent recollects at another time being at a bookseller's, where he used frequently to meet his nephew Armstrong, that he handed him Paine's Rights of Man, saying "read that, it is my creed;" this deponent thrust the book into the fire, and replied to his nephew "that he should be served so."

Thomas Drought deposed that he was well acquainted with Captain Armstrong from his infancy; that he heard him in his most serious and calm moments declare, that after death the soul dropped into a state of eternal sleep or non-entity, and that he utterly disbelieved in a state of future rewards and punishments! This deponent went to see Armstrong while he was confined to his room with the wound he had received in the foot in Colonel Walpole's engagement; that after talking of the numbers killed, &c. Armstrong said, that there were two or three caught at a distance from the field of action; that one of them was hanged outright; (which they agreed was no good way to make him confess;) that another was suspended, and he, Armstrong, cut him down,

and ordered him 25 lashes, and when he received about eight, he called out with vociferation, that he would give information; that he then led them on, and said the person who was hanged could have given the same information, though he suffered himself to be hanged. This deponent asked him whether he expected any punishment, and though he did not expect it from government, yet that there was an All-powerful Being who would punish him. Armstrong replied, "you know my opinion long ago upon that subject."

Robert Bride, a barrister swore, that he had heard Captain Armstrong, in his most serious moments, speak contemptuously of the obligation of an oath.

Charles Graydon, barrister, deposed that he had often heard Captain Armstrong, when speaking on political subjects, make use of the most violent and unqualified republican expressions!

John Boardman being sworn, said that he was a lieutenant of the lawyers' corps; that he has known the Messrs. Sheares these seven or eight years; that he has heard them wish for a parliamentary reform; once, in particular, he heard John regret that reform did not take place, as the best mode of preventing a revolution.

Chichester St. Leger deposed, that he had been acquainted with the Messrs. Sheares since their childhood, and that their general character was the very best he could conceive any men to possess.

MR. CURRAN. My lords, before I address you or the jury I would wish to make one preliminary observation. It may be a request—it may be an observation only; for myself, I am indifferent—but I feel I am now unequal to the duty—I am sinking under the weight of it.

We all know the character of the jury. The interval of their separation must be short, if it should be deemed necessary to separate them. I protest I have sunk under this trial. If I must go on, the court must bear with me—the

jury must also bear with me: I will go on until I sink. But after a sitting of sixteen hours, with only twenty minutes' interval, in these times, I should hope it would not be thought an obtrusive request, to wish for a few hours' interval of repose, or rather for recollection.

Lord Carleton. What say you, Mr. Attorney-General?

Mr. Attorney-General. My lords, I feel such public inconvenience from adjourning cases of this kind, that I cannot consent. The counsel for the prisoners cannot be more exhausted than those for the prosecution. If they do not choose to speak to the evidence, we shall give up our right to speak, and leave the matter to the court altogether. They have had two speeches already, and leaving them unreplyed to is a great concession.

Lord Carleton. We would be glad to accommodate as much as possible. I am as much exhausted as any other; but we think it better to go on.

MR. CURRAN. Gentlemen of the jury. It seems that much has been conceded to us. God help us! I do not know what has been conceded to me, if so insignificant a person may have extorted the remark. Perhaps it is a concession, that I rise in such a state of mind and body—of collapse and deprivation, as to feel but a little spark of indignation raised by the remark, that much has been conceded to the counsel for the prisoners—much has been conceded to the prisoners! Almighty and merciful God, who lookest down upon us, what are the times to which we are reserved, when we are told that much has been conceded to prisoners, who are put upon their trial at a moment like this—of more darkness and night of the human intellect, than a darkness of the natural period of 24 hours—that public convenience cannot spare a respite of a few hours to those that are accused for their lives, and that much has been conceded to the advocate, almost exhausted in the poor remark which he has endeavoured to make upon it.

My countrymen, I do pray you, by the awful duty which

you owe your country—by that sacred duty which you owe your character—(and I know how you feel it)—I do obtest you by the Almighty God, to have mercy upon my clients—to save them, not from guilt, but from the baseness of their accuser, and the pressure of the treatment under which I am sinking. With what spirit did you leave your habitations this day? With what state of mind and heart did you come here from your families? With what sentiments did you leave your children—to do an act of great public importance—to pledge yourselves at the throne of Eternal Justice, by the solemn and awful obligation of an oath, to do perfect, cool, impartial, and steady justice between the accuser and the accused? Have you come abroad under the idea that public fury is clamorous for blood? That you are put there under the mere formality or memorial of death, and ought to gratify that fury with the blood for which it seems to thirst? If you are—I have known some of you—more than one, or two, or three, in some of those situations where the human heart speaks its honest sentiments. I think I ought to know you well—you ought to know me, and there are some of you who ought to listen to what so obscure an individual may say, not altogether without some degree of personal confidence and respect. I will not solicit your attention by paying the greatest compliments which man can pay to man; but I say, I hold you in regard as being worthy of it. I will speak such language as I would not stoop to hold, if I did not think you worthy of it.

Gentlemen, I will not be afraid of beginning with what some may think I should avoid, the disastrous picture which you must have met upon your way to this court. A more artful advocate might endeavour to play with you, in supposing you to possess a degree of pity and of feeling beyond that of any other human being. But I, gentlemen, am not afraid of beginning by warning you against those prejudices, which all must possess—by speaking strongly against them—by striking upon the string—if not strong enough to snap

it, to wake it into vibration. Unless you make an exertion beyond the power almost of man to make, you are not fit to try this cause. You may preside at such an execution as the witness would extol himself for—at the sentence flowing from a very short inquiry into reason. But you are not fit to discharge the awful trust of honest men coming into the box indifferent as they stand unsworn, to pronounce a verdict of death and infamy, or of existence and of honour. You have only the interval between this and pronouncing your verdict to reflect, and the other interval when you are resigning up your last breath, between your verdict and your grave, when you may lament that you did not as you ought.

Do you think I want to flatter your passions? I would scorn myself for it. I want to address your reason—to call upon your consciences—to remind you of your oaths, and the consequence of that verdict, which, upon the law and the fact, you must give between the accuser and the accused. Part of what I shall say must, of necessity, be addressed to the court; for it is matter of law: But, upon this subject, every observation in point of law is so inseparably blended with the fact, that I cannot pretend to say that I can discharge your attention, gentlemen, even when I address the court. On the contrary, I shall the more desire your attention, not so much that you may understand what I shall say, as what the court shall say.

Gentlemen, this indictment is founded upon the statute 25 Edward III. The statute itself begins with a melancholy observation upon the proneness to deterioration, which has been found in all countries unfortunately to take place in their criminal law, particularly in the law respecting high treason. The statute begins with reciting, that, in the uncertainty of adjudications, it became difficult to know what was treason, and what was not; and, to remove further difficulty, it professes to declare all species of treason, that should thereafter be so considered, and, by thus regulating

the law, to secure the state, and the constitution, and the persons of those interested in the executive departments of the government, from the common acts of violence that might be used to their destruction. The three first clauses of the statute seem to have gone a great way indeed upon the subject; because the object of the provisions was to protect "the person"—and I beg of you to understand what I mean by person. I mean the *natural person*: I mean no figure of speech—not the monarch in the abstract, but the natural man; the first clause was made without the smallest relation to the executive power, but solely to the natural body and person. The words are, "when a man doth compass or imagine the death of the king, or of our lady his queen, or their eldest son and heir, and thereof be upon sufficient proof attainted of open deed by men of his condition, he shall be a traitor." This, I say, relates only to the natural person of the king. The son and heir of the king is mentioned in the same manner, but he has no power, and, therefore, a compassing his death, must mean the death of his natural person; and so must it be in the case of the king. To conceive the purpose of destroying a common subject was once a felony of death, and that was expressed in the same language, "*compassing and imagining* the death of the subject." It was thought right to dismiss that severe rigour of the law in the case of the subject; but it was thought right to continue it in the case of the king, in contradistinction to all the subjects within the realm.

The statute, after describing the persons, describes what shall be evidence of that high and abominable guilt: It must appear by open deed—the intention of the guilty heart must be proved by evidence of the open deed committed towards the accomplishment of the design. Perhaps in the hurry of speaking, perhaps from the mistakes of reporters; sometimes from one and sometimes from the other, judges are too often made to say that such or such an overt act is, if proved to have been committed, ground upon which

the jury must find the party guilty of the accusation. I must deny the position, not only in the reason of the thing, but I am fortified by the ablest writers upon the law of treason. In the reason of the thing, because the design entertained, and the act done, are matters for the jury. Whether a party compassed the king's death, or not, is matter for the jury : and therefore if a certain fact be proved, it is nonsense to say that such a conclusion *must* follow ; because a conclusion of law would then be pronounced by the jury, not by the court. I am warranted in this by the writers cited by Mr. Justice Foster; and therefore, gentlemen, upon the first count in the indictment, you are to decide a plain matter of fact ; 1st. Whether the prisoners did compass and imagine the death of the king ? And, 2d. Whether there be any act proved, or apparent means taken, which they resorted to for the perpetration of that crime ?

Upon this subject, many observations have already been made before me. I will take the liberty of making one : I do not know whether it has been made before. Even in a case where the overt act stated has of its own nature gone to the person of the king, still it is left to the jury to decide whether it was done with the criminal purpose alleged, or not ? In Russel's case, there was an overt act of a conspiracy to seize the guards. The natural consequence threatened from an act of gross violence so immediately approaching the king's person, might fairly be said to affect his life, but still it was left to the jury to decide whether that was done for the purpose of compassing the king's death. I mention this, because I think it a strong answer to that kind of expression, which, in bad times, falls from the mouths of prosecutors ; neither law, nor poetry, but sometimes half metaphysical. Laws may be enacted in the spirit of sound policy, and be supported by superior reason ; but when only half considered, and their provisions half enumerated, they become the plague of the government, and the grave of principle. It is that kind of refinement and cant which overwhelmed the law of treason, and

brought it to a metaphysical death ; the laws are made to pass through a contorted understanding, vibratory and confused, and, therefore, after a small interval from the first enactment of any law in Great Britain, the dreams of fancy get around, and the law is lost in the mass of absurd comment. Hence it was that the statute gave its awful declarations to those glossarisms ; so that if any case arise, apparently within the statute, they were not to indulge themselves in conjecture, but refer to the standard, and abide by the law, as marked out for them. Therefore, I say that the issue for the jury here is to decide, in the words of the statute, whether the prisoners did compass the death of the king ; and whether they can say upon their oaths, that there is an overt act proved in evidence manifesting an intention of injury to the natural person of the king.

I know that the semblance of authority may be used to contradict me. If any man can reconcile himself to the miserable toil of poring over the records of guilt, he will find them marked, not in black, but in red, the blood of some unfortunate men, leaving the marks of folly, barbarity, and tyranny. But I am glad that men, who in some situations appear not to have had the pulse of honest compassion, have made sober reflections in the hour of political disgrace. Such has been the fate of Lord Coke, who, in the triumph and insolence of power, pursued a conduct, which in the hour of calm retreat he regretted in the language of sorrow and disappointment. He then held a language which I willingly repeat, " That a conspiracy to levy war, was no act of compassing the murder of the king." There he spoke the language of law and of good sense ; for a man shall not be charged with one crime and convicted of another. It is a narrow and a cruel policy, to make a conspiracy to levy war an act of compassing the king's death, because it is a separate and distinct offence—because it is calling upon the honest affections of the heart, and creating those pathetic effusions, which confound all distinct principles of law, a grievance not to be borne in a state where the laws ought to be certain.

This reasoning is founded upon the momentary supposition, that the evidence is true; for you are to recollect the quarter from whence it comes. There has been an attempt by precipitate confession, to transfer guilt to innocence, in order to escape the punishment of the law. Here, gentlemen, there is evidence of levying war, which act, it is said, tends to the death of the king: that is, a constructive treason, calculated as a trap for the loyalty of a jury; therefore you should set bounds to proceedings of that kind; for it is an abuse of the law to make one class of offence, sufficiently punished already, evidence for another. Every court and every jury should set themselves against crimes, when they come to determine upon distinct and specified guilt; they are not to encourage a confusion of crimes by disregarding the distinction of punishments, nor show the effusion of their loyalty by an effusion of blood.

I cannot but say that when cases of this kind have been under judgment in Westminster-Hall, there was some kind of natural reason to excuse this confusion in the reports—the propriety of making the person of the king secure, a war immediately adjoining the precincts of the palace, a riot in London, might endanger the life of the king. But can the same law prevail in every part of the British empire? It may be an overt act of compassing the king's death to levy war in Great Britain; but can it be so in Jamaica, in the Bahama Islands, or in Corsica, when it was annexed to the British empire? Suppose at that time a man had been indicted there for compassing the king's death, and the evidence was, that he intended to transfer the dominion of the island to the Genoese or the French; what would you say, if you were told, that was an act by which he intended to murder the king! What, by seizing Corsica, was he to murder the king! How can there be any immediate attempt upon the king's life by such a proceeding? It is not *possible*, and therefore no such consequence can be *probably* inferred. I call upon you to listen to the court with respect,

but I also call upon you to listen to common sense, and consider, whether the conspiring to raise war can, in this country, be an overt act of compassing the king's death. I will go further. If the stat. of Edw. III. had been conceived to make a conspiracy to levy war an overt act of compassing the king's death, it would be unnecessary to make it penal by any subsequent statute, and yet subsequent statutes were enacted for that purpose, which I consider an unanswerable argument, that it was not considered as coming within the purview of the clause against compassing the king's death.

Now, gentlemen, you will be pleased to consider what was the evidence brought forward to support this indictment. I do not think it necessary to exhaust your attention by stating at large the evidence given by Captain Armstrong. He gives an account which we will have occasion to examine with regard to its credibility: he stated his introduction, first to Mr. Henry Sheares, afterwards to his brother, and he stated a conversation which you do not forget; so strange has it been! But in the whole course of his evidence, so far from making any observation, or saying a word of connection with the power at war with the king, he expressly said, that the insurrection by whomsoever prepared, or by what infatuation encouraged, was to be a *home* exertion, independent of any foreign interference whatever. And, therefore, I am warranted in saying that such an insurrection does not come within the first clause of the statute. It cannot come within the second, of adhering to the king's enemies, because that means his *foreign* enemies, and here, so far from any intercourse with them, they were totally disregarded.

Adhering to the king's enemies means coöperating with them, sending them provisions, or intelligence, or supplying them with arms. But I venture to say that there has not been any one case, deciding that any act can be an adherence to a foreign enemy, which was not calculated for the advantage of that enemy. In the case of Jackson, Hensley, and Lord Preston, the parties had gone as far as they

could in giving assistance. So it was in Quigley's. But in addition to this, I must repeat that it is utterly unnecessary the law should be otherwise, for levying war is, of itself, a crime; therefore it is unnecessary, by a strained construction, to say that levying war, or conspiring to levy war, should come within any other clause equally penal, but not so descriptive.

But, gentlemen, suppose I am mistaken in both points of my argument; suppose the prisoners (if the evidence were true) did compass the king's death and adhere to the king's enemies, what are you to found your verdict upon? Upon your oaths, what is it to be founded upon? Upon the oath of the witness—and what is that founded upon? Upon this, and this only—that he does believe there is an Eternal God, an intelligent Supreme Existence, capable of inflicting eternal punishment for offences, or conferring eternal compensation upon man, after he has passed the boundary of the grave. But where the witness believes he is possessed of a perishing soul, and that there is nothing upon which punishment or reward can be exerted, he proceeds regardless of the number of his offences, and undisturbed by the terrors of exhausted fancy, which might save you from the fear that your verdict is founded upon perjury. I suppose that he imagines that the body is actuated by some kind of animal machinery. I know not in what language to describe his notions. Suppose his opinion of the beautiful system framed by the Almighty hand to be, that it is all folly and blindness compared to the manner in which he considers himself to have been created, or his abominable heart conceives its ideas, or his tongue communicates his notions. Suppose him, I say, to think so, what is perjury to him? He needs no creed, if he thinks his miserable body can take eternal refuge in the grave, and the last puff of his nostrils can send his soul to annihilation. He laughs at the idea of eternal justice, and tells you that the grave into which he sinks, as a log, forms an entrenchment

against the throne of God, and the vengeance of exasperated justice!

Do you not feel, my fellow-countrymen, a sort of anticipated consolation in reflecting, that the religion which gave us comfort in our early days, enabled us to sustain the stroke of affliction, and endeared us to one another, and when we see our friends sinking into the earth, fills us with the expectation that we rise again, that we but sleep for a while to wake for ever. But what kind of communication can you hold, what interchange expect, what confidence place, in that abject slave—that condemned, despaired of wretch, who acts under the idea that he is only the folly of a moment—that he cannot step beyond the threshold of the grave—that that which is an object of terror to the best, and of hope to the confiding, is to him contempt, or despair?

Bear with me, my countrymen, I feel my heart run away with me—the worst men only can be cool. What is the law of this country? If the witness does not believe in God, or a future state, you cannot swear him. What swear him upon? Is it upon the book, or the leaf? You might as well swear him by a bramble or a coin. The ceremony of kissing is only the external symbol, by which man seals himself to the precept, and says, “May God so help me as I swear the truth.” He is then attached to the Divinity upon the condition of telling truth, and he expects mercy from Heaven as he performs his undertaking. But the infidel! By what can you catch his soul, or by what can you hold it? You repulse him from giving evidence—for he has no conscience, no hope to cheer him, no punishment to dread! What is the evidence touching that unfortunate man? What said his own relation, Mr. Shervington? He had talked to him freely, had known him long. What kind of character did he give him? Paine was his creed, and his philosophy. He had drawn his maxims of politics from the vulgar and furious anarchy broached by Mr. Paine. His ideas of religion were from the vulgar maxims of the same man, the scandal of inquiry, the blasphemer of his God and of his

king. He bears testimony against himself, that he submitted to the undertaking of reading both his abominable tracts—that abominable abomination of all abominations, “*Paine’s Age of Reason*,” professing to teach mankind, by acknowledging, that he did not learn himself!—working upon debauched and upon narrow understandings. Why not swear the witness upon the vulgar maxims of that base fellow, that wretched outlaw and fugitive from his country and his God.

Is it not lamentable to see a man labouring under an incurable disease, and fond of his own blotches? “Do you wish,” says he, “to know my sentiments with regard to politics; I have learned them from Paine! I do not love a king and if no other executioner could be found, I would myself plunge a dagger into the heart of George III. because he is a king! And because he is my king, I swear by the sacred missal of Paine, I would think it a meritorious thing to plunge a dagger into his heart, to whom I had devoted a soul, which Mr. Paine says I have not to lend.” Is this the casual effusion of a giddy young man, not considering the meaning of what he said? If it were said among a parcel of boarding-school misses, where he might think he was giving specimens of his courage by nobly denying religion, there might be some excuse. There is a latitude assumed upon some such occasions. A little blasphemy, and a little obscenity, passes for wit in some companies. But recollect, it was not to a little miss, whom he wished to astonish, that he mentioned these sentiments, but to a kinsman, a man of boiling loyalty. I confess I did not approve of his conduct in the abstract—talking of running a man through the body; but I admired the honest boldness of the soldier, who expressed his indignation in such warm language. If Mr. Shervington swore true, Captain Armstrong must be a forsworn witness—it comes to that simple point—you cannot put it upon other ground. I put it to your good sense—I am not playing with your understandings—I am putting foot to foot, and credit to credit. One or other of the two must be perjured. Which of them is it? If you

disbelieve Captain Armstrong, can you find a verdict of blood upon his evidence?

Gentlemen, I go further. I know your horror of crimes, your warmth of loyalty. They are among the reasons why I respect and regard you. I ask you, then, will you reject such a witness? Or, would you dismiss the friend you regarded, or the child you loved, upon the evidence of such a witness? Suppose him to tell his own story—"I went to your friend, or your child—I addressed myself in the garb of friendship—in the smile of confidence. I courted confidence in order to betray it—I traduced you—spoke all the evil I could against you, to inflame him—I told him your father does not love you." If he went to you and told you this—that he inflamed your child, and abused you to your friend, and said, "I come now to increase it by the horror of superadded cruelty"—would you dismiss from your love and affection the child or the friend you loved for years? You would not prejudge them. You would examine the consistency of the man's story; you would listen to it with doubt, and receive it with hesitation.

Says Captain Armstrong, "Byrne was my bookseller—from him I bought my little study of blasphemy and obscenity with which I amused myself." "Shall I introduce Mr. Sheares to you?"—not saying which. What is done then? He thought it was not right till he saw Captain Clibborn. Has he stated any reason why he supposed Mr. Sheares had any wish at all to be introduced to him? Any reason for supposing that Byrne's principles were of that kind, or any reason why he imagined the intercourse was to lead to any thing improper? It is most material that he says he never spoke to Byrne upon political subjects; therefore, he knew nothing of Byrne's principles, nor Byrne of his. But the proposal was made, and he was so alarmed that he would not give an answer till he saw his captain. Is not this incredible? There is one circumstance which made an impression on my mind, that he assumed the part of a pub-

lit informer, and, in the first instance, came to the field with pledgets and bandages—he was scarcely off the table, when a witness came to his credit. It is the first time that I saw a witness taking fright at his own credit, and sending up a person to justify his character.

Consider how he has fortified it: He told it all to Captain Clibborn! He saw him every evening, when he returned, like a bee, with his thighs loaded with evidence. What is the defence? That the witness is unworthy of belief. My clients say their lives are not to be touched by such a man; he is found to be an informer—he marks the victim. You know the world too well, not to know that every falsehood is reduced to a certain degree of malleability by an alloy of truth. Such stories as these are not pure and simple falsehoods. Look at your Oates, your Bedloes, and Dugdales! I am disposed to believe, shocking as it is, that this witness had the heart, when he was surrounded by the little progeny of my client—when he was sitting in the mansion in which he was hospitably entertained—when he saw the old mother supported by the piety of her son, and the children basking in the parental fondness of the father, that he saw the scene, and smiled at it—contemplated the havoc he was to make, consigning them to the storms of a miserable world, without having an anchorage in the kindness of a father! Can such horror exist, and not waken the rooted vengeance of an Eternal God?* But it cannot reach this man beyond the grave; therefore, I uphold him here. I can imagine it, gentlemen, because, when the mind becomes destitute of the principles of morality and religion, all within the miserable being is left a black and desolated waste,

* In another edition of this trial, we find the following note: "Here the sympathizing humanity of the orator could not be suppressed—tears stopped the eloquence of his tongue! Had the writer of this report the language of a Demosthenes, or the abilities of a Cicero, he could not describe the feelings of the learned counsel's heart. He can only say, in the words of Virgil, *Sit mihi fas audita loqui*, what I have heard, permit me to relate."

never cheered by the rays of tenderness and humanity. When the belief of Eternal Justice is gone from the soul of man, horror and execution may set up their abode. I can believe that the witness—with what view I cannot say—with what hope I cannot conjecture—you may—did meditate the consigning of these two men to death, their children to beggary and reproach—abusing the hospitality with which he was received, that he might afterwards come here and crown his work, having obtained the little spark of truth by which his mass of falsehood was to be put into animation.

I have talked of the inconsistency of the story. Do you believe it, gentlemen? The case of my client is, that the witness is perjured, and you are appealed to in the name of that everliving God whom you revere, but whom he despiseth, to consider that there is something to save him from the baseness of such an accuser.

But I go back to the testimony—I may wander from it, but it is my duty to stay with it. Says he, “Byrne makes an important application—I was not accustomed to it. I never spoke to him, and yet he, with whom I had no connection, introduces me to Sheares. This is a *true* brother.” You see, gentlemen, I state this truly—he never talked to Byrne about politics; how could Byrne know his principles? By inspiration! He was to know the edition of the man, as he knew the editions of his books. “You may repose all confidence.” I ask not, is this true; but, I say, it can be nothing else than false. I do not ask you to say it is doubtful. It is a case of blood, of life or death, and you are to add to the terrors of a painful death, the desolation of a family, overwhelming the aged with sorrow, and the young with infamy. Gentlemen, I should disdain to reason with you; I am pinning your minds down to one point, to show you, to demonstration, that nothing can save your minds from the evidence of such perjury—not because you may think it false, but because it is impossible it can be true. I put into the scales of justice that execrable perjury, and I

put into the other, the life, the fame, the fortune, the children of my client. Let not the balance tremble as you hold it—and, as you hold it now, so may the balance of Eternal Justice be held for you.

But, is it upon his inconsistency only I call upon you to reject him? I call in aid the evidence of his own kinsman, Mr. Shervington, and Mr. Drought, the evidence of Mr. Bride and Mr. Grayden. Before you can believe Armstrong, you must believe that all those are perjured. What are his temptations to perjury? The hope of bribery and reward—and he did go up with his sheets of paper in his hand—here is one, it speaks treason—here is another, the accused grows paler—here is a third, it opens another vein. Had Shervington any temptation of that kind? No; let not the honest and genuine soldier lose the credit of it. He has paid a great compliment to the proud integrity of the king, his master, when he did venture, at a time like this, to give evidence—"I would not have come for 100 guineas." I could not refuse the effusion of my heart, and exclaimed, May the blessings of God pour upon you, and may you never want 100 guineas!

There is another circumstance—I think I saw it strike your attention, my lords. It was the horrid tale of the three servants whom he met upon the road—they had no connection with the rebels—if they had, they were open to a summary proceeding. He hangs up one, shoots a second, and administers torture to the body of the third, in order to make him give evidence! Why, my lords, did you feel nothing stir within you—adjudications had condemned the application of torture for the extraction of evidence. When a wild and furious assassin had made a deadly attempt upon a life of much consequence, it was proposed to put him to the torture, in order to discover his accomplices. I know not whether to admire most the awful and impressive lesson by Felton, or the doctrine stated by the judges of the land. "No," said he, "put me not to the torture; for, in the

extravagance of my pain, I may be brought to accuse yourselves." What say the judges? "It is not allowable by the law and constitution of England, to inflict torture upon any man, or to extract evidence under the coercion of personal sufferings." Apply that to this case—if the unfortunate man did himself dread the application of such an engine for the extraction of evidence, let it be an excuse for his degradation, that he sought to avoid the pain of body by public infamy.

But there is another observation more applicable. Says Mr. Drought—"Had you no feeling, or do you think you will escape future vengeance?" "O, Sir, I thought you knew my ideas too well to talk in that way." Merciful God! Do you think it is upon the evidence of such a man that you ought to consign a fellow subject to death? He who would hang up a miserable peasant to gratify caprice, could laugh at remonstrance, and say, "you know my ideas of futurity." If he thought so little of murdering a fellow creature, without trial and without ceremony, what kind of compunction can he feel within himself, when you are made the instruments of his savage barbarity? He kills a miserable wretch, looking, perhaps, for bread for his children, and who falls unaccused, uncondemned. What compunction can he feel at sacrificing other victims, when he considers death as eternal sleep and the darkness of annihilation? These victims are at this moment led out to public execution, he has marked them for the grave, he will not bewail the objects of his own work; they are passing through the vale of death, while he is doing over the expectancy of mortal annihilation!

Gentlemen, I am too weak to follow the line of observation I had made—but I trust I am warranted in saying that if you weigh the evidence, the balance will be in favour of the prisoners.

But there is another topic or two to which I must solicit your attention. If I had been stronger in a common case I would not have said so much: Weak as I am here, I must

say more. It may be said that the parol evidence may be put out of the case ; attribute the conduct of Armstrong to folly, or passion, or whatever else you please, you may safely repose upon the written evidence. This calls for an observation or two. As to Mr. Henry Sheares, that written evidence, even if the hand-writing were fully proved, does not apply to him. I do not say it was not admissible. The writings of Sidney, found in his closet, were read—justly, according to some—but I do not wish to consider that now. But I say the evidence of Mr. Dwyer has not satisfactorily established the hand-writing of John. I do not say it is not proved to a certain extent : but it is proved in the very slightest manner that you ever saw paper proved ; it is barely evidence to go to you, and the witness might be mistaken. An unpublished writing cannot be an overt act of treason ; so it is laid down expressly by Hale and Foster. A number of cases have occurred, and decisions have been pronounced, asserting that writings are not overt acts for want of publication ; but if they plainly relate to an overt act proved, they may be left to the jury for their consideration. But here it has no reference to the overt acts laid ; it could not be intended for publication until after the unfortunate event of revolution had taken place, and therefore it could not be designed to create insurrection. Gentlemen, I am not counsel for Mr. John Sheares, but I would be guilty of cruelty, if I did not make another observation. This might be an idle composition, or the translation of idle absurdity from the papers of another country. The manner in which it was found leads me to think that the more probable. A writing designed for such an event as charged, would hardly be left in a writing box unlocked, in a room near the hall door. The manner of its finding also shows two things : that Henry Sheares knew nothing of it, for he had an opportunity of destroying it, as Alderman Alexander said he had ; and further, that he could not have imagined his brother had such a design, and it is impossible, if the paper had been designed for such purposes, that it would not be communicated to him.

There is a point to which I will beseech the attention of your lordships—I know your humanity, and it will not be applied merely because I am exhausted or fatigued. You have only one witness to any overt act of treason. There is no decision upon the point in this country—Jackson's case was the first; Lord Clonmell made allusion to the point; but a jury ought not to find guilty upon the testimony of a single witness. It is the opinion of Foster, that by the common law, one witness, if believed, was sufficient. Lord Coke's opinion is, that two were necessary: they are great names; no man looks upon the works of Foster with more veneration than myself, and I would not compare him with the depreciated credit of Coke; I would rather leave Lord Coke to the character which Foster gives him: that he was one of the ablest lawyers, independent of some particulars, that ever existed in England.

In the wild extravagance, heat, and cruel reign of the Tudors, such doctrines of treason had gone abroad as drenched the kingdom with blood. By the construction of crown lawyers, and the shameful complaisance of juries, many sacrifices had been made, and therefore it was necessary to prune away these excesses by the statute of Edw. VI. and therefore there is every reason to imagine, from the history of the times, that Lord Coke was right in saying, not by new statute, but by the common law, confirmed and redeemed by declaratory acts, the trials were regulated. A law of Philip and Mary was afterwards enacted; some think it was a repeal of the statute of Edw. VI. some think not. I mention this diversity of opinions with this view, that in this country, upon a new point of that kind, the weight of criminal prosecution will turn the scale in favour of the prisoners, and that the court will be of opinion, that the statute 7 Wm. III. did not enact any new thing, unknown to the common law, but redeemed it from abuse. What was the state of England? The king had been declared to have abdicated the throne, prosecu-

tions; temporizing juries, and the arbitrary construction of judges, condemned to the scaffold those who were to protect the crown—men, who knew that after the destruction of the cottage, the palace was endangered. It was not then the enactment of any thing new; it was founded in the caution of the times, and derived from the maxims of the constitution. I know the peevishness with which Burnet observed upon that statute; he is reprehended in a modest manner by Foster; but what says Blackstone, of great authority, of the clearest head, and profoundest reading. He differs from Montesquieu, the French philosopher:—

“In cases of treason, there is the accused’s oath of allegiance to counterpoise the information of a single witness; and that may perhaps be one reason, why the law requires a *double testimony* to convict him; though the principal reason undoubtedly is, to secure the subject from being sacrificed to fictitious conspiracies, which have been the engines of profligate and crafty politicians in all ages.”*

Gentlemen, I do not pretend to say that you are bound by an English act of parliament. You *may* condemn upon the testimony of a single witness. You, to be sure, are too proud to listen to the wisdom of an English law. Illustrious independence! You may murder under the semblance of judicial forms, because you are proud of your blessed independence! You may pronounce that to be legally done, which would be murder in England, because you are proud! you may imbrue your hands in blood, because you are too proud to be bound by a foreign act of parliament, and when you are to look for what is to save you from the abuse of arbitrary power, you will not avail yourself of it, because it is a foreign act of parliament! Is that the independence of an *Irish* jury? Do I see the heart of any Englishman move when I say to him—“Thou servile Briton, you cannot condemn upon the perjury of a single witness, because you are held in the tight waistcoat of the cogency of an act of parliament.” If power seeks to make victims by judicial means,

* See note at the end of this trial,

an act of parliament would save you from the perjury of abominable malice. Talk not of proud slavery to law, but lament that you are bound by the integrity and irresistible strength of right reason, and at the next step bewail that the all-powerful Author of Nature has bound himself in the illustrious servitude of his attributes, which prevent him from thinking what is not true, or doing what is not just. Go then and enjoy your independence. At the other side of the water, your verdict upon the testimony of a single witness would be murder. But here, you can murder without reproach, because there is no act of parliament to bind you to the ties of social life, and save the accused from the breath of a perjured informer. In England, a jury could not pronounce conviction upon the testimony of the purest man, if he stood alone, and yet what comparison can that case bear with a blighted and marred informer? where every word is proved to be perjury, and every word turns back upon his soul!

I am reasoning for your country and your children, to the last hour of your dissolution. Let me not reason in vain. I am not playing the advocate—you know I am not. Your conscience tells you I am not. I put this case to the bench: the stat. 7 Hen. III. does not bind this country by its legislative cogency—and will you declare positively and without doubt, that it is common law, or enacting a new one? Will you say it has no weight to influence the conduct of a jury from the authority of a great and exalted nation? the only nation in Europe where liberty has seated herself. Do not imagine that the man who praises liberty is singing an idle song: for a moment, it may be the song of a bird in his cage: I know it may. But you are now standing upon an awful isthmus—a little neck of land where liberty has found a seat. Look about you—look at the state of the country—the tribunals that dire necessity has introduced: Look at this dawn of law, admitting the functions of a jury. I feel a comfort—methinks I see the venerable forms of Holt and

Hale, looking down upon us, attesting its continuance. Is it your opinion that bloody verdicts are necessary—that blood enough has not been shed? That the bonds of society are not to be drawn close again, nor the scattered fragments of our strength bound together, to make them of force, but they are to be left in that scattered state in which every little child may break them to pieces? You will do much towards tranquillizing the country by a verdict of mercy. Guard yourselves against the sanguinary excesses of prejudice or revenge, and though you think there is a great call of public justice, let no unmerited victim fall.

Gentlemen, I have tired you—I durst not relax. The danger of my client is from the hectic of the moment, which you have fortitude, I trust, to withstand; in that belief I leave him to you—and as you deal justice in mercy, so may you find it—and I hope that the happy compensation of an honest discharge of your duty may not be deferred till a future existence, which this witness does not expect, but that you may speedily enjoy the benefits you will have conferred upon your country.

Mr. Prime Serjeant replied to Mr. Curran, and, in a speech of some length, commented upon the law that had been adduced, and contended that it had been settled even in England, that Lord Coke was mistaken, and that one witness was sufficient in high treason, by the common law; that in Ireland, the point, as he supposed, had been put to rest on the trial of Jackson. (*Vide ante.*) He then concluded, by stating the several overt acts set forth in the indictment, and applying the evidence to them.

Mr. Henry Sheares. My lords, I wish to say a word.

Lord Carleton. It is not regular, after the counsel for the crown have closed. I asked you at the proper time, you then declined. However, go on.

Mr. Henry Sheares. My lord, after the able and eloquent defence which has been made for me by my counsel, it would ill become me to add any thing to it. But, there is one

part of it; which appears to me not to have been sufficiently dwelt upon. It is respecting that paper.* I protest, most solemnly, my lords, I knew nothing of it; to know of it and leave it where it was when the magistrate came, is a folly so glaring, that I cannot be supposed to have been guilty of it. When the alderman rapped at the door, I asked what was the matter? After he was admitted, he said he wanted my papers. I told him they were there. My lords, is it possible I could commit myself, and all I hold dear, by such an egregious act of folly? Having the dearest sources of happiness around me, should I sacrifice them and myself, by leaving such a document in an open writing box?

My lords, I beg your lordships' pardon. I thank you for this indulgence: It would be irregular for me to expatiate further. The evidence of Captain Armstrong is one of the most ingenious and malicious fabricated stories, with respect to me, I ever heard of. My lords, I should think I could not be legally implicated by any paper found in that way.

Lord Carleton. Gentlemen of the jury, the indictment in this case imputes to the prisoners at the bar crimes of the greatest magnitude, in which the prisoners have the most important concern, in which justice is equally interested. On the one hand, these crimes go to the very existence of the state; on the other, the consequences of conviction are of the most penal nature. You will, therefore, determine impartially between the public, which calls for the prosecution of real offenders, and the prisoners, who are entitled to an acquittal, if they are innocent; and I am sure you will decide this case, without being influenced, either by the present critical situation of the country, or the pathetic address to your passions which you have heard from the prisoners' counsel.

The indictment charges two species of treason, compassing the death of the king—and adhering to his enemies. In indictments of this kind, it is necessary to set forth some

* Meaning the proclamation No. II.

overt acts; they are the steps, means, or measures taken in prosecution of, and to effectuate the intent and design proposed. If any of them be properly laid and proved, it will warrant a conviction, although the evidence be not sufficient to support the others.

As to the first species of treason, the compassing and imagining the death of the king: the life of the king, as the chief magistrate, is so linked and interwoven with the existence of the state, that if it be taken away, convulsions must arise, destroying every bond of society, levelling all order, annihilating all liberty and property, rooting out our noble constitution, and overspreading the land with desolation; the law, therefore, with anxious solicitude for his protection, renders the intention to destroy the king, as criminal as its accomplishment would be, provided such intention is acted upon, and any measures are adopted for carrying it into execution. Every stroke levelled at the king's person, aims destruction at the public tranquillity, and the guilty purposes of the mind are placed in the same degree of guilt, as if they were completely carried into execution, as soon as any measures have been taken to render them effectual. The care which the law has taken of the personal safety of the king is not confined to acts directly aiming at his life—it is extended to every thing wilfully and deliberately done or attempted, whereby, in the natural course of things, or in the common experience of mankind, his life may be endangered; and the measures taken in such cases may, at the same time, be evidence and overt acts of compassing his death.

Among the many cases cited by authors of the highest reputation, the following have been considered as law: Forming conspiracies to usurp, by force, and in defiance of the authority of parliament, the government of the kingdom, to destroy its constitution, and, in so doing, to destroy the monarchy; or to levy war against the king's person, thereby to depose him, or otherwise to depose his majesty, are overt acts of compassing the king's death within the statute of 25

Edw. III. So is holding consultations, or entering into agreements, or advising, soliciting, or persuading others for any such purposes, or assenting to such purposes. The law is the same as the entering into any other measures to effectuate any of the said purposes. The moment the power of the government is usurped, the king is in effect deposed; he is bound, by the duty of his situation, to resist such attempts, even at the peril of his life; and the several acts which I have mentioned, whereby his life may be endangered, have been deemed, under the sound construction of the statute, and upon principles of substantial political justice, overt acts of compassing his death. It is not material, when the overt act is a conspiracy to depose the king, or the levying, or conspiring to levy direct war against his person, involving an intention to depose him, whether the person charged with compassing the king's death has in his contemplation all the mischief which may flow from the acts which he meditates: if the death of the king is, in the nature of things, and the common experience of mankind, likely to result from the measures taken and the acts done, it is sufficient; and the act done is considered as done in pursuance of an intent to compass the death of the king.

This, gentlemen, is the unanimous opinion of the court; and the law, in this respect, does not rest upon our authority only. It was the unanimous opinion of the judges who sat on the trials of Tooke and Hardy. Adhering to the king's enemies is likewise an overt act of compassing the king's death; it manifests a design to depose him. He is bound to support the law and the constitution, and to defend the kingdom against his enemies, and, in the contest, his life may be put in hazard.

Gentlemen, I have stated thus much, as applicable to the first count in the indictment. The second count is for adhering to the king's enemies within the realm; that is also treason within the statute of Edw. III. Aid or comfort afforded to the king's enemies within the realm, or elsewhere,

whereby they may be strengthened or better enabled to carry on war, armaments, or enterprises against us, or to defend themselves, or whereby the king's hands might be weakened, are acts of adherence to his enemies; any act whereby the relative war power of the enemy might be promoted, if done with that intent, is a treasonable adherence, though the attempt should prove abortive, and not produce the intended effect; because the party has done all in his power to render it effectual; and, gentlemen, wisely the law is so; for traitors would escape, if no punishment could be inflicted while the government existed; and it would be too late to attempt it when the government was overturned.

Notoriety is sufficient evidence of war, and of the French being enemies to the king and his government. Gentlemen, I shall now state the overt acts, which are set forth in the indictment, that you may see how far you think all or any of them are established. I shall also state the evidence, and I shall, afterwards, state the object which you are to look at, in a narrow point of view, for your consideration, that your attention may not be distracted.

[Here his lordship enumerated the several overt acts in the indictment, classing them as they related to the same subjects, and then proceeded:]

Gentlemen, the two prisoners stand indicted, as concerned in these several acts; and there has been evidence, if you give credit to it, that implicates them both in a conspiracy; and that having been done, every act committed by one is evidence against the other, to the extent of ascertaining the nature of the conspiracy; but it is always, in such cases, open to the jury to separate the prisoners, and to say how far guilt shall ultimately be confined to one or extended to both, by the particular evidence in the cause; therefore, gentlemen, in attending to the evidence in this case, you will consider it with its different relative bearings to the two prisoners at the bar.

[His lordship then proceeded to recapitulate the evidence,

observing upon it as he stated it, and particularly pointing to the consideration of the jury such parts of it as tended to corroborate the evidence of Armstrong, and when he came to that part relative to the paper found by Alderman Alexander, he mentioned that it was found in a writing box which lay upon a table, open and unlocked, and that it did not appear in evidence whose property that writing box was, or to which of the prisoners the house belonged.]

Mr. John Sheares. I beg your lordship's pardon, it was in my writing box that paper was found.

Lord Carleton. I could not call upon the prisoner for any admission of that kind, and I wish the case may be determined on the evidence alone. This paper was in the hand-writing of John: no evidence was offered to disprove his hand-writing to it. It does not appear, by express evidence, which of the prisoners was to be deemed as having it in his possession; as against John, who had written it, it is of more weight, than against Henry: but as against the latter, it is of weight, as being the act of one of the conspirators, ascertaining the nature and objects of the conspiracy, nevertheless as to him leaving the discussion, as to the extent of his guilt, open. Gentlemen, this paper wants one circumstance of additional strength in not being published; but notwithstanding, it is very powerfully operative in the cause, as corroborative of the other evidence, and as marking the intention of the party whom it is to affect. A spirit of massacre and rebellion, an intent to destroy the existing government, and to usurp the sovereign power of the state, a hatred to the connection of Ireland with Great Britain, settled plans of attacks to be made on the king's government, and a system of terror and rewards are strongly expressed; in short, the paper speaks so plainly and strongly, that it is only necessary for you to hear it read without my remarking upon the different parts.

[After his lordship had gone through the whole of the evidence, he said:]

Now, gentlemen, a great deal has been urged, and you

must draw your attention to this subject. Much depends upon the credit which you give to the testimony of Captain Armstrong: his testimony is sought to be impeached, by showing that he does not believe in a Supreme Being, and in a future state of rewards and punishments. He has sworn that he does believe in a Supreme Being, and in a future state of rewards and punishments; though it has been sworn he declared the contrary. If he does not believe in a Supreme Being, and a future state of rewards and punishments, his evidence, to be sure, ought to go for nothing. Whether he has made those declarations which have been imputed to him, and if he did, whether he made them seriously; and communicating his real opinions, or as matter of idle conversation, (for he has been described as giddy and inconsiderate in his expressions,) you are to determine. You will also consider the circumstances of corroboration which have appeared; he gave an account of each meeting, as it was held; in that respect, the evidence of Clibborn supports and fortifies his testimony, and in several parts of his testimony, the papers established his credit in a very strong manner, as I more particularly pointed out to you when I stated those papers to you. The evidence of Kearney also has the same tendency, especially when the memorandum is taken into consideration; on the other hand, as a further ground offered to impeach him, there is a circumstance to be considered, namely, the manner of his getting admission to the prisoners; it has not been pressed upon you that he was to be considered as an accomplice; but that he went as a spy, for the purpose of discovering the conduct of the prisoners. You will take that into your consideration, and see what influence it may have upon your minds as to his credit.

Gentlemen, I stated all the different overt acts, intimating, that I might afterwards suggest my ideas as to the object of your inquiry upon a shorter scale. With regard to compassing the death of the king, if meetings were held, or con-

spiracies formed, to overthrow the government, to usurp the sovereign power of the state, to depose the king, in my apprehension, the evidence, if you believe it, and are satisfied such was the object, is sufficient to establish the charge against the prisoners. Supposing the evidence satisfactory to your minds to establish the fact of a scheme formed to levy war against the king, this agitated war doubtless would (if levied) have been, in construction of law, express, direct war against the king's person, and an overt act of compassing and imagining his death. It was to be a war, referring to foreign aid, and invasion, and in which, if the French armies came in time, they might be participators, but which, for special reasons, was to precede the arrival of the French; the camp of the king's troops was intended to be taken by storm, or surprise, risings were to take place in various parts of the kingdom, and at periods which were to have a certain relation to each other; the king's artillery, his representative and council, and government, to be seized, and taken into the hands of the insurgents; all those circumstances will be combined together by you, and if you believe that the prisoners embarked in those designs, as stated by the evidence, the object, in truth, will then appear to be, to overthrow the government, to create a governing power in themselves, and the consequence would be the deposition of the king, a clear overt act of treason, in compassing his death. If, therefore, I say, you believe the evidence, as establishing the conclusions which I have mentioned, it is sufficient to maintain the first charge.

If you are satisfied upon the first count, that the facts which I have just now alluded to, have been established against both the prisoners, you will find them both guilty; if they are established against one only, you will find him guilty, and acquit the other upon that count; and if, gentlemen, you entertain one rational doubt, not merely a capricious doubt, but the doubt of sensible men, then, in a capital case, you will lean in favour of life.

With regard to the second count, for adhering to the king's enemies, I have stated to you that it is of the essence of that charge, that the act done must be with the imputed intent of aiding the king's foreign enemies. The evidence is a conspiracy to raise war, and open rebellion, to take the camp, city of Dublin, the castle, the lord lieutenant and privy council: These measures were to be carried into execution at a late period, but a scheme appears to have been framed to bring them forward, from the anxiety of the people involved in the conspiracy for their friends who were to be tried in Kildare at the then approaching assises; therefore, an intention was professed of having the rising at an earlier period than was first expected, and this was communicated to Captain Armstrong by the prisoner John Sheares, under the pressure of events, as he stated, which prevented them from waiting any longer the arrival of the French; you are, therefore, to consider, whether you can infer that this rising was acted upon with a view to aid the French. That intent is absolutely necessary. It is matter of notoriety that the French have been upon the coast the winter before the last, and might, possibly, be expected again. You must, on this count, be satisfied of this intent.

The other judges concurred in opinion with his lordship.

The jury then retired for 17 minutes, and brought in a verdict, finding both the prisoners GUILTY.

As soon as the verdict was pronounced, the prisoners clasped each other in their arms.

It being now near 8 o'clock on Friday morning, the court adjourned to 3 o'clock.

When the court met at the hour appointed,

The Attorney-General moved, that Henry Sheares and John Sheares might be brought up for the judgment of the court.

Court. Let them be brought up.

Mr. M'Nally. My lords, none of the counsel assigned for the prisoners attend, but myself; I have, however, a

point to mention, which I would rather state in the absence of the prisoners, (however singular,) lest, if I am not founded, it should fill them with false hopes. I have compared this indictment with that in Stone's case; there it was stated that a war existed, as it does here; but there was an averment which is not to be found in this indictment—"That a war had been carried on and prosecuted, to wit, at Hartford, in the county of Middlesex," laying a *venue*: that is not done here. There is a plain reason for it: The words of the statute are, if a man shall adhere to the king's enemies "without the realm or elsewhere." Therefore, the indictment should state where the adherence was. I shall not trouble your lordships further. If I am wrong, I have to apologize, and have only to attribute my interference to the zeal which I feel for my clients.

Lord Carleton. You have been extremely proper in mentioning it in the absence of the prisoners, because they cannot avail themselves of the objection; for, if that whole count were bad, yet the other count would be sufficient to maintain the judgment.

The prisoners were then brought to the bar.

The clerk of the crown read the indictment, and asked them what they had to say, why judgment of death and execution should not be awarded against them, according to law? •

Mr. Henry Sheares. My lord, as I had no notion of dying such a death as I am about to meet, I have only to ask your lordship for sufficient time to prepare myself and family for it. I have a wife and six children, and hope your humanity will allow me some reasonable time to settle my affairs, and make a provision for them. [Here he was so overwhelmed with tears, that he could not proceed.]

Mr. John Sheares. My lord, I wish to offer a few words, before the sentence is pronounced, because there is a weight pressing upon my heart, much greater than that of the sentence which is to come from the court. There has been, my

lord, a weight pressing upon my mind, from the first moment I heard the indictment read upon which I was tried, but that weight has been more peculiarly and heavily pressing upon my heart, when I found the accusation in the indictment enforced and supported upon the trial; and that weight would be insupportable, if it were not for this opportunity of discharging it: it would be insupportable since the verdict of my country has stamped that evidence as well founded. Do not think, my lords, that I am about to make a declamation against the verdict of the jury, or the persons concerned in the trial; I am only about to call to your recollection a part of the charge, which my soul shudders at; and if I had not this opportunity of denouncing it, before your lordships and this auditory, no courage would be sufficient to support me. The accusation, my lords, to which I allude, is one of the blackest kind, and peculiarly painful, because it appears to have been founded upon my own act and deed, and to be given under my own hand. The accusation of which I speak, while I linger here yet a minute, is, "that of holding out to the people of Ireland a direction to give no quarter to the troops fighting for its defence." My lords, let me say this—and if there be any acquaintances in this crowded court—I will not say my intimate friends, but acquaintances—who do not know that what I say is truth, I should be reputed the wretch which I am not. I say, if any acquaintance of mine can believe that I could utter a recommendation of giving no quarter to a yielding and unoffending foe, it is not the death that I am about to suffer which I deserve—no punishment could be adequate to such a crime. My lords, I cannot only acquit my soul of such an intention, but I declare, in the presence of that God before whom I must shortly appear, that the favourite doctrine of my heart was—"That no human being should suffer death, but where absolute necessity required it."

My lords, I feel a consolation in making this declaration, which nothing else could afford me; because, it is not only

a justification of myself, but where I am sealing my life with that breath which cannot be suspected of falsehood, what I say may make some impression on the minds of men not holding the same doctrine. I declare to God, I know no crime but assassination which can eclipse or equal that of which I am accused. I discern no shade of guilt between that and taking away the life of a foe, by putting a bayonet to his breast when he is yielding and surrendering. I do request the bench to believe that of me. I do request my country to believe that of me—I am sure God will think that of me.

Now, my lords, I have no favour to ask of the court—my country has decided I am guilty, and the law says that I shall suffer—it sees that I am ready to suffer.

But, my lords, I have a favour to request of the court that does not relate to myself. My lords, I have a brother, whom I have ever loved dearer than myself; but, it is not from affection for him alone that I am induced to make this request. He is a man, and therefore, I hope, prepared to die, if he stood as I do, though I do not stand unconnected, but he stands more dearly connected. In short, my lords, to spare your feelings and my own, I do not pray that I should not die; but that the husband, the father, the brother, and the son, all comprised in one person, holding these relations dearer in life to him than any other man I know; for such a man, I do not pray a pardon, for that is not in the power of the court; but I pray for a respite for such time as the court, in its humanity and its discretion, shall think proper.—You have heard, my lords, that his private affairs require arrangement. I have a further room for asking it:—if immediately both of us be taken off, an aged and revered mother, a dear sister, and the most affectionate wife that ever lived, and six children, will be left without protection or provision of any kind. When I address myself to your lordships, it is with the knowledge you have of all the sons of our aged mother being gone. Two have perished in the service of

the king ; one very recently. I only request that, disposing of me with what swiftness, either the public mind or justice requires, a respite may be given to my brother, and that the family may acquire strength to bear it all. That is all I wish—I shall remember it to my last breath, and I will offer up my prayers for you to that Being who has endued us all with sensibility to feel. This is all I ask—I have nothing more to say.

Lord Carleton then pronounced sentence of death on the prisoners ; and these unfortunate brothers were executed on the 14th day of July, 1798, to the inexpressible sorrow of a great majority of the Irish nation.

*COUNSEL for the crown :—*Mr. Solicitor-General, Mr. Prime Serjeant, Messrs. Saurin, O'Grady, Mayne, Webber, and Ridgeway ; Agent, Mr. Kemis.

*COUNSEL for the prisoners :—*For Henry Sheares, Messrs. Curran and Plunket, assigned—For John Sheares, Messrs. Curran and McNally, assigned ; Messrs. Orr and Finlay, assistants ; Agent, Mr. Fitzgerald.

COPY OF A LETTER FROM MR. JOHN SHEARES TO HIS SISTER, DATED KILMAINHAM PRISON, 11th JULY, 1798.

“ Wednesday Night.

—“ The troublesome scene of life is nearly closed, and the hand that now traces these lines, in a short time will be no longer capable of communicating to a beloved family the sentiments of his heart.

“ It is now 11 o'clock, and I have only time to address my beloved Julia in a short, eternal farewell. Thou Sacred

Power! whatever be thy name and nature, who has created us the frail and imperfect creatures that we are, hear the ardent prayer of one now on the eve of a most awful change. If thy Divine Providence can be affected by mortal supplication, hear and grant, I most humbly beseech thee, the last wishes of a heart that has ever adored thy greatness and thy goodness. Let peace and happiness once more visit the bosom of my beloved family—let a mild grief succeed the miseries they have endured; and when an affectionate tear is generously shed over the dust of him who caused their misfortunes, let all their ensuing days glide on in union and domestic harmony. Enlighten my beloved brother; to him and his invaluable wife, grant the undisturbed enjoyment of their mutual love; and, as they advance, let their attachment increase—Let my Julia, my feeling, my too feeling Julia, experience that consolation which she has often imparted to others—let her soul repose at length in the consummation of all the wishes of her excellent heart—let her taste that happiness her virtues have so well merited. For my other sisters, provide those comforts their situation requires. To my mother, O, Eternal Power! what gift shall I wish for this matchless parent?—Restore her to that peace which I have unfortunately torn from her—let her forget me in the ceaseless affections of my sisters, and in their prosperity—let her taste that happiness which is best suited to her affectionate heart; and, when at length she is called home, let her find, in everlasting bliss, the due reward of a life of suffering virtue.

“Adieu, my dear Julia—My light is just out—The approach of darkness is like that of death, since both alike require me to say farewell—Farewell for ever!—O, my dear family, farewell—Farewell for ever!—

“J. S.”

The following is the paper alluded to as found in the writing box of John Sheares.

"IRISHMEN! Your country is free, and you are about to be avenged. That vile government, which has so long and so cruelly oppressed you, is no more! Some of its most atrocious monsters have already paid the forfeit of their lives, and the rest are in our hands. The national flag—the sacred GREEN, is at this moment flying over the ruins of despotism, and that capital, which a few hours past had witnessed the debauchery, the plots and crimes of your tyrants, is now the citadel of triumphant Patriotism and Virtue! Arise, then, United Sons of Ireland, arise like a great and powerful nation, determined to live free or die. Arm yourselves by every means in your power, and rush like lions on your foes. Consider that for every enemy you disarm, you arm a friend, and thus become doubly powerful. In the cause of liberty inaction is cowardice, and the coward shall forfeit the property he has not the courage to protect. Let his arms be secured and transferred to those gallant spirits who want and will use them. Yes, Irishmen, we swear by that Eternal Justice in whose cause you fight, that the brave patriot who survives the present glorious struggle, and the family of him who has fallen, or shall hereafter fall in it, shall receive from the hands of a grateful nation an ample recompense out of that property which the crimes of our enemies have forfeited into its hands, and his name shall be inscribed on the national record of Irish revolution, as a glorious example to all posterity; but we likewise swear to punish robbers with death and infamy. We also swear never to sheath the sword till every being in the country is restored to those equal rights which the God of Nature has given to all men, until an order of things shall be established in which no superiority shall be acknowledged among the citizens of Erin, but that of virtue and talent.

"Rouse all the energies of your souls, call forth all the merit and abilities which a vitious government consigned to obscurity, and under the conduct of your leaders march with a steady step to victory. Heed not the glare of a hired soldiery or aristocratic yeomanry; they cannot stand the vigorous shock of freemen; their trappings and their arms will soon be yours; and the detested government of England, to which we vow eternal hatred, shall learn that the treasures it exhausts on its accoutred slaves for the purpose of butchering Irishmen, shall but further enable us to turn their swords on its devoted head.

"Many of the military feel the love of liberty glow within their breasts, and have already joined the National Standard. Receive with open arms such as shall follow so glorious an example; they can render signal service to the cause of freedom, and shall be rewarded according to their deserts. But for the wretch who turns his sword against his native country, let the national vengeance be visited on him—let him find no quarter.

"Two other crimes demand

* * * * *

"Attack them in every direction by day and by night. Avail yourselves of the natural advantages of your country, which are innumerable, and with which you are better acquainted than they. Where you cannot oppose them in full force, constantly harass their rear and flanks, cut off their provisions and magazines, and prevent them as much as possible from uniting their forces. Let whatever moment you cannot devote to fighting for your country be passed in learning to fight for it, or preparing the means of war, for war, war alone, must occupy every mind and every hand till its long oppressed soil be purged of all its enemies.

"Vengeance, Irishmen! Vengeance on your oppressors! Remember what thousands of your dearest friends have perished by their merciless orders. Remember their burnings, their rackings, their torturings, their military massacre and their legal murders. Remember ORR!"

SOME ACCOUNT OF THE FAMILY OF THE SHEARES.

Henry and John Sheares were descended from a respectable family in the county of Cork, and related, by marriage, to the Earl of Shannon. Their father was a M. P. and had a pension of 200*l.* from government. His sons, Henry and John, received a liberal education; the father intended them both for the bar, but the eldest took a liking to the army, in which he served some time as a lieutenant. At the peace of 1783, he left the army, and entered himself as a student in the temple, and then followed, like his brother, the profession of the law. Their talents were respectable. Henry had a considerable portion of knowledge, but he was not so successful in bringing it forward as John, who, as a younger brother, may perhaps have exerted himself with greater diligence. From their infancy, they were much attached to each other, had similar sentiments, and lived in the same house. Unfortunately their politics acquired a republican cast, and their conversation and occasional publications, unsuited to the times, and "the powers that be," displayed too openly their opinions.

With minds thus prepared, the French revolution of course excited their warmest approbation. It is said that they actually went to Paris in 1792, became acquainted with Brissot, and were initiated into all the mystery of clubism, fraternization, &c.* With these principles, they returned to Ireland, and, in an evil hour, joined the *United Men*. Government soon obtained information of their unguarded proceedings—they became the dupes of a governmental spy and informer; themselves and their papers were seized; they became the victims of the law, and suffered the pains and penalties of rebellion.

* What infinite mischiefs have arisen from the *French* revolution! Its evils are incalculable, whether we consider the many good men who perished in their endeavours to establish a system of rational liberty in Europe, or, that the cause of liberty itself has received almost a mortal wound in every part of the world.

When Lord Carleton was passing sentence on these unfortunate gentlemen, he was so much affected that he could scarcely proceed. He had been the townsman and friend of their father, and lived with him in habits of intimacy. He owed to Mr. Sheares, perhaps, some of his best principles of thinking and acting; and the recollection of such scenes, and the melancholy duty he was then performing, to a mind even less feeling, must have been a painful task indeed! What must have been his *lordship's* feelings, when in the act of condemning the sons of his early friend and benefactor to an ignominious death!—

ON THE LAW OF HIGH TREASON, see p. 319.

FOR the information of the general reader, it seems necessary to draw together some of the authorities and opinions of the most learned sages of the law, concerning this so frequently contested point in the Irish courts of judicature, i. e. *the number of witnesses necessary by the common law to conviction for high treason*. It is proper, however, to premise, that the history of the English government evinces that the proceedings in cases of high treason have ever been more or less arbitrary, in proportion as the prosecuting power has been more or less strong, or deaf, to the sentiments of justice and humanity.

In England, an act of parliament was passed 1 Edw. VI. *requiring two lawful accusers* (which was interpreted to mean *two lawful witnesses*) in all cases of treason—and in 1 Philip and Mary, another act was passed, declaring “that all trials of treasons shall be according to the course of the common law.” These two conflicting statutes gave rise to various doubts and uncertainties in that country, which were at length finally put to rest by the stat. 7 William III. which positively and distinctly required two witnesses. As, however, none of those statutes extended to Ireland, and as the Irish parliament passed no law upon the subject, the number of witnesses necessary to a conviction for high treason remains to be decided by the ancient common law of England, which was introduced into Ireland as it stood prior to the reign of Henry VII.

Mr. Justice Foster, in his Discourse on High Treason, says, that “it hath been generally agreed, and I think upon just grounds, (though Lord Coke hath advanced a contrary

doctrine,) that at common law one witness was sufficient in the case of treason, as well as in every other capital case. *Fost. C. L.* 233.

Serjeant Hawkins, in his *Pleas of the Crown*, c. 25. s. 129. expresses himself thus: "It seems, that before the 1 Edw. VI. no certain number of witnesses was required upon the indictment or trial of any crime whatsoever; for it seems to be generally agreed, that the statute of P. and M. in restoring the order of trial by the common law, took away the necessity of two witnesses in all cases within those statutes, from whence it plainly seems to follow that they were not required by the common law." After noticing that a contrary opinion has been held by some, he proceeds thus: "However the law might have stood in relation to these matters before the Conquest, it seems to have been wholly altered long before the statute of Edw. VI. and I rather incline to this opinion, since I find it so little supported by the generality of the authorities cited by Sir Edward Coke for the proof of the contrary."

Here it is worthy of remark, that the passage in Foster seems to be a mere *obiter dictum* of the author, in support of which not a single argument is advanced, nor authority cited; and Hawkins has evidently grounded his opinion upon the strong inference to be drawn from the statutes, and the slight manner in which Coke was supported in a contrary opinion by the generality of the authorities he had cited, but he does not pretend that any of them contradict what his lordship has advanced.

Now let us hear Lord Coke, and observe how far he is supported by reason, and the opinions of other great men:—"And it seemeth (saith his lordship) that by the ancient common law, one accuser, or witness, was not sufficient to convict any person of high treason; for in that case where there is but one accuser, it shall be tried before the constable and marshal by combat, as by many records appeareth. But the constable and marshal have no jurisdiction to hold plea of any thing which may be determined or discussed by the common law: And that two witnesses be required, appeareth by our books, and I remember no authority in them to the contrary; and the common law herein is grounded upon the law of God, expressed both in the old and the new testament: "At the mouth of two witnesses, or three witnesses, shall he that is worthy of death be put to death; but at the mouth of one witness he shall not be put to death."—*Deut.* 17. 6. *Matt.* 18. 16. *John*, 18. 23. *2 Cor.* 13. 1. *Heb.* 10. 28.

Sir Thomas Raymond's report of Lord Stafford's case (408.) contains the following paragraph: "And upon this occasion, my lord chancellor, in the lords' house, was pleased to com-

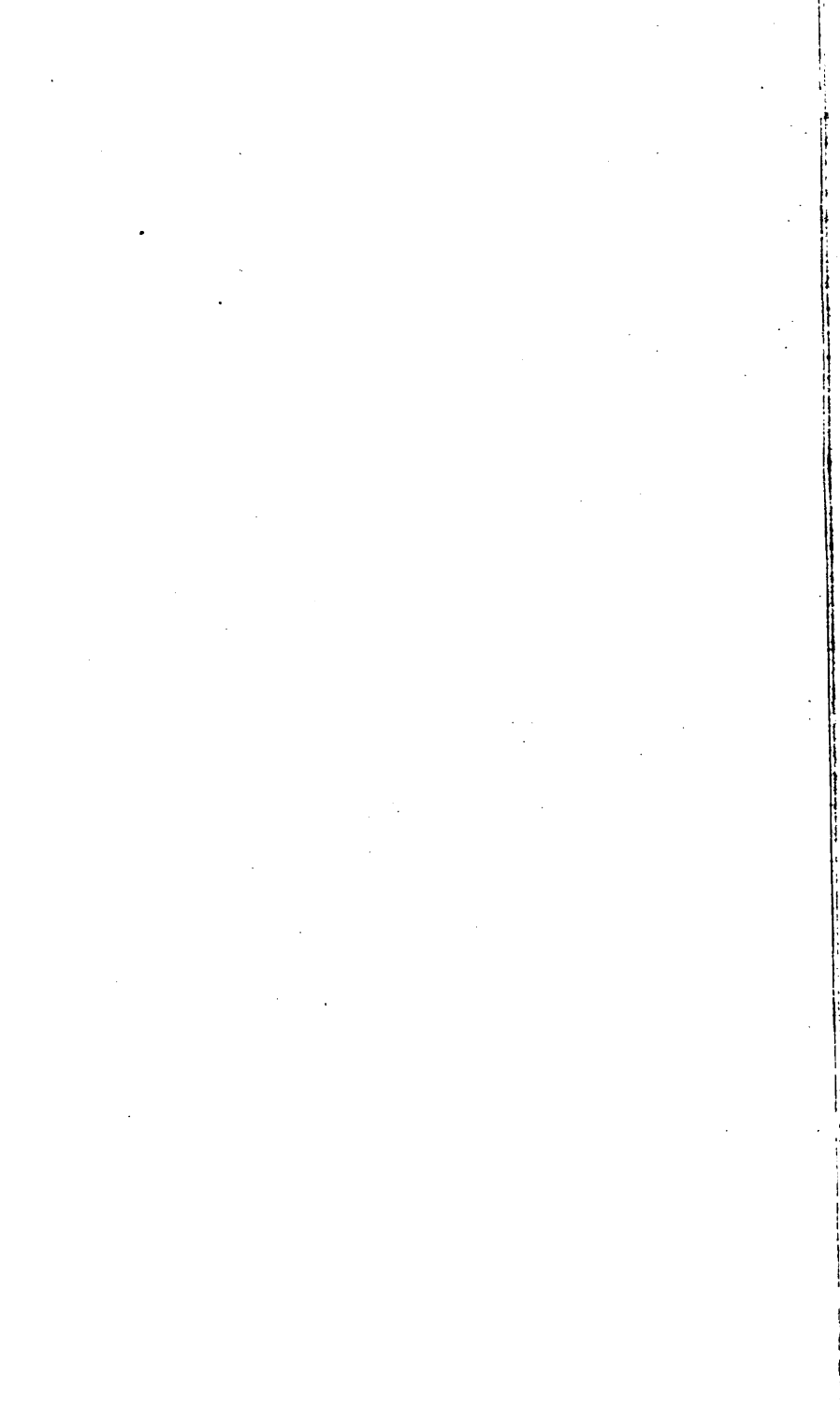
municate a notion concerning the reason of two witnesses in treason, which, he said, was not very familiar, he believed; and it was this; anciently, all or most of the judges were churchmen and ecclesiastical persons, and by the canon law now, and then in use all over the christian world, none can be condemned of heresy but by two lawful and credible witnesses; bare words may make a heretic, but not a traitor, and anciently heresy was treason; and from thence the parliament thought fit to appoint that two witnesses ought to be for proof of high treason." From this notion of the lord chancellor, the inference is very strong, that men whose partiality to the civil law induced them to decide that two witnesses were necessary in cases of heretical treason, would have introduced the general rule of that law, in that respect as applicable to every other species of treason. Add the sound reason given by Blackstone: "In cases of treason (says he) there is the accused's oath of allegiance to counterpoise the information of a single witness; and that perhaps may be one reason why the law requires a double testimony to convict him; though the principal reason undoubtedly is, to secure the subject from being sacrificed to fictitious conspiracies, which have been the engines of wicked and crafty politicians in all ages." 4 Com. 358. (See p 319. of this book.)

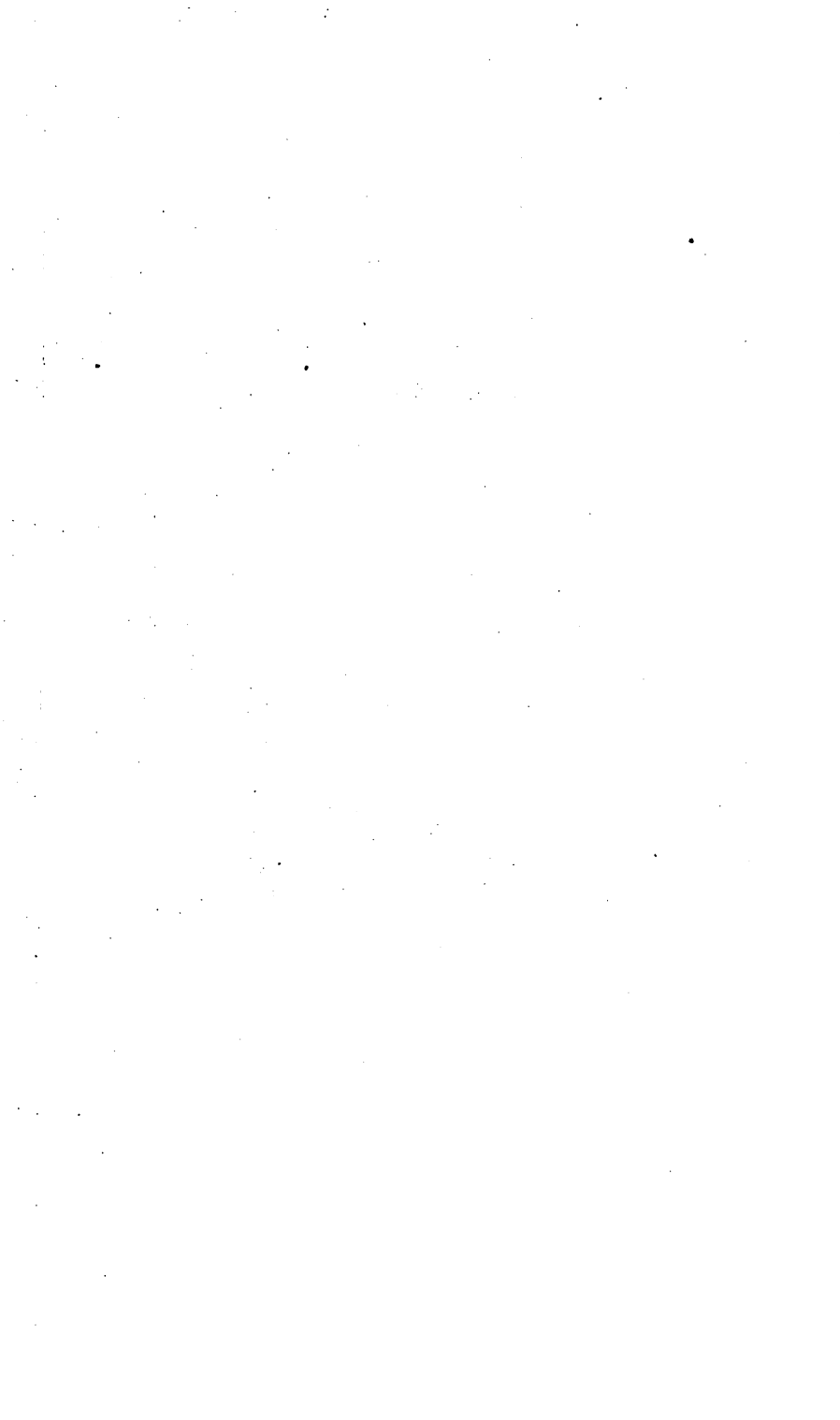
Those laws (says Montesquieu) which condemn a man to death on the deposition of a single witness, are fatal to liberty. In right reason there should be two, because a witness who affirms, and the accused who denies, make an equal balance, and a third must incline the scale. B. 12. c. 3. Beccaria to the same effect, c. 13.

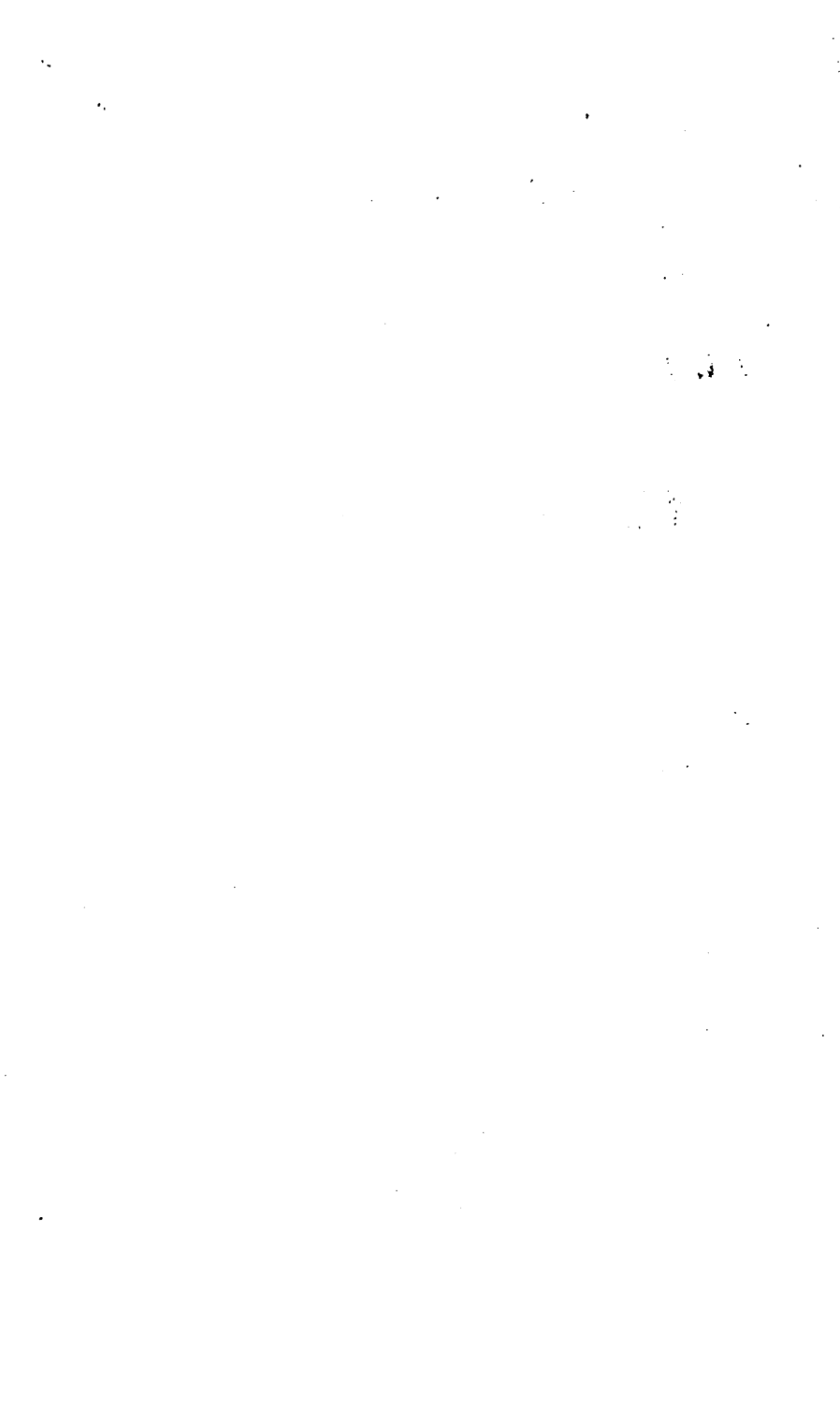
Ratio est anima legis, "Reason is the life of the law," is a maxim of the English system of jurisprudence. Were the decision of this question to be governed by that maxim, and a regard to liberty and sound policy, there are few, I am sure, who would hesitate to concur in opinion with that deep-searching sage of the law, Sir Edw. Coke.

The clause in the constitution of the United States upon this important subject of high treason, is apparently very clear and explicit. It is, however, devoutly to be wished, that an occasion for diving into its true meaning and intention had never occurred, or that it had happened in times of less devotedness to *British* principles and precedents. Every *American* would do well to peruse Judge Tucker's Essay on this subject. See 4 Tuck. Black. Appendix, Note B.









JAN 29 1943

